



*To my beloved son,*  
*FREDERICK TALBOTT WILSON*





## INTRODUCTION

*"Like one of those wondrous stones reared by the druids, which the finger of a child might vibrate to its center, yet the might of an army could not move from its place, our Constitution is so nicely poised and balanced that it seems to sway with every breath of opinion, yet so firmly rooted in the heart and affections of the people that the storms of treason and fanaticism break over it in vain."*—R. C. WINTHROP.

**D**URING the present eventful decade there has been a marked revival of interest in the study of the Constitution of the United States on the part of loyal citizens, who had hitherto been prone to leave this subject to the legal fraternity and to the "cloistered mind."

Americans have always revered this "greatest of all charters of human freedom" because it guarantees "Equal Justice Under Law"—the inscription over the entrance to the Supreme Court building in Washington.

Since the nation will, in 1937, celebrate the one hundred and fiftieth anniversary of the writing of the Constitution, the publication of *Our Constitution and Its Makers* at this time is especially appropriate.

In recent years governments throughout the world have been rising and falling with disturbing frequency and the rights of the ordinary citizen are being threatened with ruthless destruction in many lands, but the Government of the United States, founded upon the bed-rock of constitutional liberty, remains secure and strong. Though our boundaries have been vastly extended, the national wealth increased a thousand fold, and the daily pursuits of the people largely changed from that of agriculture to industry, our legal, economic and political problems for the most part remain fundamentally the same today as they were in 1787, and the constant and consistent application of constitutional principles was never more necessary.

According to the plan of its framers, the Constitution gave definite and separate powers to each of the three coördinate branches of the new government, the legislative to make, the executive to exe-

cute, and the judicial to interpret the law; and it was wisely provided that the control over the "Purse and the Sword" should be vested in the popular or legislative department—the right to originate revenue measures being lodged exclusively in the House of Representatives whose members biennially come fresh from the firesides of the people.

Mr. Wilson gives the history of and reasons for these basic and unique features of the American system and clearly shows that there has been much misunderstanding on account of the assumption in times past of undue powers by some one of its coördinate branches.

*Our Constitution and Its Makers* is neither a legal treatise nor a thesis for or against any constitutional theories or interpretations, and the book has no partisan bias or coloring. It is what it purports to be, a simple graphic story of the events leading up to the Constitutional Convention, a record of its proceedings and a series of intimate human sketches of its members. There is also an excellent discussion of the fight for ratification of the Constitution in the original thirteen states and a review of its subsequent amendments. The reader will find it a veritable mine of historical information.

The peculiar charm and value of this book also lies in the fact that the author has succeeded in putting into popular form an account of what was said and done in the Convention itself. In reading the sketches one feels that he is becoming personally acquainted with the old patriots whose characters are so faithfully and delightfully portrayed. Mr. Wilson has retouched with a master's brush the fast fading pictures of these builders of the nation. In addition to his wide research, he has visited many of the home sections of the makers of the Constitution and, wherever possible, has interviewed their nearest living descendants. As a result, his style has a strikingly personal flavor.

Mr. Wilson has already won high distinction as an authority on American history and as a lecturer on the Constitution. The publication of this new volume will undoubtedly add to his well-earned and increasing reputation.

It is a source of regret that the learned and beloved former Governor of Virginia, the Honorable John Garland Pollard, could not write this introduction as he so much desired to do.

*Washington, D. C.*

EDMUND RANDOLPH PRESTON.

## PREFACE

**R**ECENT events in the United States and elsewhere continue to make a study of our Constitution of supreme concern and interest to all.

Many books have been written about the Constitution from many angles. The purpose of this volume is to furnish to the general reader, as well as to all students, a clear-cut picture of the historic events which led to the calling of the Convention which drafted the Constitution of the United States, the making of the Constitution, its ratification by the States, its subsequent amendments, and the leading actors in the great Convention at Philadelphia. It is not intended as an exhaustive study of any one particular feature of the Constitution, but as a popular outline of its general features and a series of brief but adequate pictures of the personalities who framed it.

Unfortunately, many of our people think of our Federal Constitution as a subject too profound for the average mind. The idea is a mistaken one, although there is a plausible reason for such an attitude. An air of awe and mystery not only surrounded the Convention which wrote the Constitution in secret session, but the original document itself was held in seclusion for many years after its completion. It was March 16, 1796, eight and one-half years after the Convention adjourned, before George Washington, as President of the United States, turned over to Timothy Pickering, the Secretary of State, the original Constitution which Washington had aided in making, to be placed for the first time in the archives of the National Government. Up to that time it had been in the private possession of Washington, as was directed by the Convention which wrote it. Again it was twenty-three years later, in 1819, before the meager formal minutes of the Constitutional Convention were published by John Quincy Adams, Secretary of State in the Cabinet of James Monroe, then President, pursuant to a resolution of Congress dated March 27, 1818. It was not until 1840, or twenty-two years later and fifty-three years after the Constitution had been written, that the pri-

vate notes of James Madison, the first complete record of what transpired at the Constitutional Convention, were first published. These notes were left by Madison with other property to Mrs. Madison, who was directed by him to publish them after his death, which occurred in June, 1836. Being unable to do so advantageously, Mrs. Madison offered the papers to the Federal Government which, under an Act of Congress approved March 3, 1837, paid her thirty thousand dollars for the priceless records. The joint committees of the Library of Congress, by authority of another Act of July 9, 1838, published the papers in three volumes in 1840 under the direction of Henry B. Gilpin, Solicitor of the Treasury.

The placing of the Constitution in its permanent home in the Library of Congress at Washington, where the visitor may view the original document and its companion in historic interest, the Declaration of Independence, did much to remove the invisible walls which shut it out so long from the thinking of the average man.

Other incomplete notes on the Constitution have appeared from time to time besides those of Madison. In 1821 John Lansing, one of the three New York delegates to the Constitutional Convention, published the biased notes of his colleague and political mentor, Robert Yates, who had died twenty years before. Yates left the Convention with Lansing on July 5, 1787, a few weeks after it had opened, and the notes kept by him were only a partial account of what took place on the Convention floor. Seventy-three years later, in 1894, the scattered notes of Rufus King, one of the Massachusetts delegates, appeared in his published works. The notes kept by William Paterson, of New Jersey, the author of the New Jersey Plan for a Constitution introduced early in the session of the Convention, have also been published. Sketchy but inadequate personal descriptions of the members of the Convention written by William Pierce, of Georgia, have also been published.

I am indebted to many great sources for aid in the preparation of this volume. My first inspiration for attempting it came from the late Dr. Charles Hillman Brough, the World War Governor of Arkansas, and later Chairman of the District of Columbia Boundary Commission. His encouragement was of inestimable value as I pursued, through the years, the studies which preceded the final labor

of writing. I am also much indebted to Mr. Hugh A. Morrison and Mr. George H. Milne in charge of the House Reading Room of the Library of Congress for courtesies extended during the many months spent there in search of material. I also acknowledge my thanks to Mr. M. A. Roberts, the Superintendent of the Main Reading Room, for his kindnesses.

I am happy to have the introduction to this volume written by the Honorable John Garland Pollard,\* a native Virginian, who served as Governor of that State from 1930 to 1934, and is now Chairman Board of Veterans' Appeals in Washington, D. C. By an interesting coincidence, it was the high distinction of Governor Pollard to occupy four major positions in the political life of Virginia formerly occupied by Edmund Randolph, Governor of Virginia, at the time of the making of the Constitution. Those four positions were: Mayor of Williamsburg; membership in a constitutional convention; Attorney-General; and Governor of the State. Governor Pollard also served as a member of the Faculty of the College of William and Mary, the alma mater of Governor Edmund Randolph and four other delegates to the Constitutional Convention.

I wish to acknowledge my especial thanks to Miss Bessie D. Thrasher, of Washington, D. C., who greatly aided me in the preparation of this book, and to Mr. Fred E. Diehl, of Chicago, for invaluable literary assistance.

The publishers and I agree that an extended bibliography is seldom used and for that reason it is omitted from this volume. Acknowledgment is made, however, of my debt to *The Dictionary of American Biography* and *The Biographical Directory of the American Congress from 1774* for many facts about the makers of the Constitution. I have relied largely on the notes of Madison and Yates for data about the Constitutional Convention. *Elliott's De-*

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\* Governor Pollard was ill at the time this book went to press and unable to complete its introduction. He had read the manuscript and approved it for publication. In this emergency, the author turned to Governor Pollard's, and his, friend, the Honorable Edmund Randolph Preston, Special Assistant to the Attorney General of the United States, a student of history and the Constitution, much interested in this work, who consented to write the introduction. Mr. Preston occupies a high position in the department of government organized by his ancestor, Edmund Randolph, the first Attorney General of the United States.

*bates* was of much aid in my study of the fight over the ratification of the Constitution.

It may interest the reader to know that the final proof of this volume was read in the ancestral home of Peyton Randolph at Williamsburg, Virginia, which was at that time the property of the family of Frederick H. Ball, descendants of the Ball family from whence came Mary, the mother of Washington. It was in the old Colonial Capitol nearby that the world's first written Constitution was adopted one hundred and sixty years before.

If this volume shall awaken in the minds of all its readers a new understanding and appreciation of the Constitution and a growing reverence for its makers, the author will be amply repaid for the long and tedious toil devoted to its preparation.

He deeply regrets that space will not allow more extended sketches of the great men pictured herein. He will be content if—

*“Here the unlearned their wants may view,  
The learned reflect on what before they knew.”*

F. T. W.

*Washington, D. C.*

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*PART ONE*

*HISTORICAL BACKGROUND*

“*The Constitution of the United States was made in fact by conservative statesmen for safety, not for speed; and the momentous innovations of American history have not been the product of a restless national temperament working a reckless will in the political world, but the slow development of fundamental ideas, most of them inherited, in response to the changing circumstances of time and necessities of the age. Driven into independence by defence of what they held, and to a large extent rightly held, to be inherited English liberties, the colonists reluctantly found themselves under the necessity of evolving a new nation and a new nationality. But, left to themselves, they were first concerned to safeguard what they had won. They sought to fix and conserve not only the fruits of Independence by means of the Constitution, but the mood and tense mentality of the Revolution by legends of an heroic age.*”—A. E. POLLARD, of the University of London, in *Factors in American History*, pp. 82-83.

## I

### GLIMPSES OF EARLY AMERICAN HISTORY

#### I. EAST OF THE APPALACHIAN MOUNTAINS

IT was one hundred and fifteen years after the first voyage of Columbus before any permanent English settlement took place on the North American continent. England's claims to the North Atlantic seaboard were based on the explorations of John and Sebastian Cabot in 1498, who sailed along the eastern shores of the present United States at the command of Henry VII, then King of England. In 1584 Sir Walter Raleigh sailed along the coast of what is now North Carolina, but made no permanent settlement. In 1606, under a charter granted by King James of England, a group of adventurous Englishmen led by Captain John Smith set sail across the Atlantic in three small boats bearing the commonplace names of *Godspeed*, *Susan Constant*, and *Discovery*. After an uneventful journey the little band of 105 travelers landed on May 13, 1607, at a point near the mouth of the James River in present Virginia, where the settlement called "Jamestown," after the English king, was founded. The walls of the historic church of Jamestown which are still standing, the fine monument erected there by the United States Government, and the bronze figures of Captain John Smith and Pocahontas, the Indian maid who saved his life, are the sole physical reminders of the first English settlement in America.<sup>1</sup>

Twelve years later, on July 30, 1619, the first legislative assembly in American history met at Jamestown. It was composed of twenty-eight members, twenty-two of whom were chosen by the eleven plantations making up the colonial assembly, and six of whom were

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<sup>1</sup> Captain John Smith died June 6, 1631, at fifty-two years of age and was buried at Saint Sepulcher's Church in London. The inscription on his tomb contains the following:

*"But what avails his conquest now he lies  
Interred in earth, a prey to worms and flies."*



delegates at large. Among the members was Peter Randolph, an ancestor of Thomas Jefferson and the Randolph family of Virginia.

While John Smith was leading his first group of settlers to Virginia, 1606-7, another group quite different from Smith's adventurers, the Pilgrims, set sail from England and settled for a time in Leyden, Holland. In 1620, thirteen years after the settlement at Jamestown, this little band of Pilgrims again set sail, landed on the coast of Massachusetts at Plymouth, and established the first permanent settlement in "New England," as Captain John Smith had named the section a few years before.<sup>2</sup> The Pilgrims who first landed at Plymouth were members of the English gentry, who had found that in Holland they could not avoid mingling their English blood with that of the Dutch, and therefore had sought the shores of far-off America. They also disliked the Continental Sabbath and feared the Spanish. Their original plan had been to locate at New York, where Dutch settlers had gone a few years before. But this was not pleasing to the Dutch in Holland, and there is a tradition that Thomas Jones, the commander of their vessel, the famous *Mayflower*, had been bribed before leaving home to change its course and land his passengers at some other point. The Plymouth party was one primarily interested in seeking religious freedom, a privilege its members had not enjoyed in old England. The colony of Massachusetts Bay was founded at Salem eight years later, in 1628, and that of New Hampshire to the north in 1629.

The colony of Maryland was first permanently settled in 1634. Sir George Calvert, Lord Baltimore, was given a charter by Charles I to establish an American colony in what is now the State of Maryland as a haven of refuge for the oppressed Catholics of England. It was named in honor of Henrietta Maria, Queen of Charles I.

Connecticut had two original colonies: One at Hartford known as the Connecticut Colony, established in 1635, and one at New Haven known as the New Haven Colony, established in 1638. The two colonies were united under the name of Connecticut in 1665.

Rhode Island was first settled in 1636 by Roger Williams, a former fiery leader of a radical religious group in Massachusetts, who

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<sup>2</sup> Jamestown had already become an established settlement.

had been banished from that state. A proclamation was issued in 1936 by the Commonwealth of Massachusetts formally revoking the banishment of Williams three hundred years before.

New York was first recognized as an English Colony in 1674, when after the overthrow of the Dutch by the English the name New York was given to New Amsterdam, the original Dutch name for its principal city. Sixty-five years before that date the Dutch had first claimed New York on account of the explorations of Hendrik Hudson, an Englishman who in 1609 as the representative of a Dutch trading company had sailed up the Hudson River, the explorer's namesake, as far as the site of the present city of Albany. New York's first settlers and rulers were Dutch.

The territory included in the two states of North and South Carolina was granted in 1663 by Charles II to the Earl of Clarendon under the name of the Carolinas. They were under a proprietary form of government until 1719, when the territory was divided into two states, North and South Carolina, which states were under the royal form of government from that date until 1776. The first settlement in the North Carolina section was made at Albemarle Sound in 1650; the first settlement in the South Carolina section being made near Charleston twenty years later.

New Jersey had its first English settlement in 1664.

Delaware, named for Lord DelaWarr, was known as "The Lower Counties of Pennsylvania" until 1776, when it became an independent state. It was first settled by Swedes in 1680 and was known as New Sweden. The first permanent settlement in Pennsylvania was made in 1681 when the William Penn Colony was established.

Fifty years elapsed before the colony of Georgia, the last to be permanently established, became a reality in 1732; that was one hundred and twenty-five years after the settlement at Jamestown. The charter given to Oglethorpe by George II was intended to open up in America an asylum to debtors freed from prison in England. One of Oglethorpe's secretaries was Charles Wesley, the hymn writer and brother of John Wesley, the founder of Methodism.

All of the colonies were governed directly by England from the time of their permanent establishment until after the Revolutionary War had begun. All of them with the exception of New York and

Delaware had been first settled by the English. A common language prevailed, except for the German used in many parts of Pennsylvania, and despite the fact that each was in itself an independent republic, there was a remarkable unity of language, purpose, religion, social and political institutions.

Three different forms of government, provincial, proprietary and charter, were in use. The provincial or royal form of government, under which New Hampshire, New York, Virginia, North Carolina, South Carolina and Georgia were ruled, had the largest number of citizens living under it. These governments existed under the direct and immediate authority of the King of England without any fixed constitution, the organization being dependent upon the respective commissions issued from time to time by the Crown to the respective royal colonial governors, who ruled as the personal representative of the King. The governor was appointed by the King's commission, and a council was selected to assist him in the discharge of his official duties. He was also given authority to call a general assembly of the representatives of the freeholders and planters of the colonies, and under the authority of the royal governor colonial assemblies were also organized. The representatives of the people constituted the council of freeholders and planters, the upper house of these primitive legislatures. The governor had full power of veto, and full authority to call together and discharge the assemblies. All local laws and ordinances had to be made in conformity to the laws of England, and all were subject to the approval or disapproval of the Crown.

The proprietary form of government prevailed in three States, Maryland, Pennsylvania, and Delaware. Grants were given from the Crown to one or more persons proprietary, which gave them not only the rights of the soil, but also the general powers of government within the territory granted them. Authority equal to that exercised by the Crown in the provincial government belonged to the proprietary, William Penn in Pennsylvania, and Lord Baltimore in Maryland. The governor and legislature were appointed and organized under the direction of the proprietary, and all others in authority received their power from his hands. One of the first great political struggles in the political life of America was the struggle between the proprietary group in Pennsylvania and the opposition to it led by

Benjamin Franklin. {Because of these efforts Franklin may be designated the founder of the democratic idea of government in America,

Three of our New England States, Massachusetts, Rhode Island and Connecticut, were ruled under the charter form of government. The charters were grants of the Crown which gave to the great political corporations created thereby not only the soil but also the power of legislation and government over all the people. Under the charter form of government three great departments of government, the legislative, executive, and judicial, were provided for, and secured for the inhabitants certain political privileges and rights. The peculiar feature of the charter form was that the government of the colonies having it were not immediately under the authority of the Crown, and claimed not to be bound by any acts of the Crown inconsistent with their own charters, whereas under the provincial form of government the rulers were entirely subject to the authority of the Crown. The charter form of government also differed from the proprietary in that whereas under the charter form of government powers were divided among departments of government as fixed by the charters in various manners, under the proprietary form the government was under the control and authority of the proprietary in place of the Crown.

All thirteen colonies threw off the yoke of England in 1776, the year of the Declaration of Independence. Eleven of the number wrote state constitutions of their own during that year, New York adopted its constitution in 1777, and Massachusetts finally in 1780 substituted a constitution for the old royal charter under which it had at first continued to operate. Connecticut did not write a new constitution until 1818 and Rhode Island waited twenty-five years later before its first constitution was written as a result of the Dorr rebellion.

## II. WEST OF THE APPALACHIAN MOUNTAINS

The actual writing of our Federal Constitution in 1787 was primarily if not exclusively the work of men of the Eastern seaboard. Nevertheless so many of the events which colored the decisions of the men who drew that great document were either inspired or much influenced by events which were occurring west of the Appalachian

Barrier that no complete understanding is possible without at least some knowledge of the region's previous history.

In 1539, forty-seven years after Columbus accidentally sighted the shores of one of the islands of the West Indies, Hernando de Soto, a Spanish nobleman and explorer, landed on the coast of Florida with a small band of followers and trudged across what are now the states of Florida, Georgia, Alabama, Mississippi, and parts of Tennessee, Arkansas and Missouri in a vain search for gold, and thereby made the first interior exploration of a part of North America.<sup>3</sup> He looked for the first time upon the river called the "Mississippi," at a point below the present city of Memphis, Tennessee. He crossed the river at what is now "Old Town Landing, Arkansas," where, on his return from the north, near the mouth of the Red River, exhausted from weariness, he became ill and died on May 15, 1542. He was a devout Catholic, and during his last days had a small church erected out of logs, where it is said the first Christian services within a church in North America were held. De Soto was buried in the Mississippi River.

Canada was first appropriated and settled by the French at Quebec. It was not until one hundred and thirty-one years after the journey of de Soto ended that Father Jacques Marquette, a French Catholic missionary from Canada, in company with Joliet and three other companions, crossed the border of what is now the state of Wisconsin. On June 17, 1673, he came upon the upper waters of the Mississippi near what Frenchmen who came after him called Prairie du Chien, where the Wisconsin River flows into the main stream. Father Marquette died two years after his first discovery of the Mississippi at the age of thirty-eight and was buried at St. Ignace, Michigan; his statue was placed in Statuary Hall in the capitol at Washington by the state of Wisconsin. Fine statues of Marquette now stand at Mackinac Island and at Marquette, Michigan, on Lake Superior.

The next recorded interior explorations were those of LaSalle, another Frenchman who went to Green Bay, Wisconsin, in 1679 from Canada, and two years later after crossing Lake Michigan went down

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<sup>3</sup> De Soto, who had recently fought in Peru, hoped to reach Mexico, then called New Spain.

the Illinois and Mississippi rivers to the mouth of the latter where on April 9, 1682, he claimed, in the name of the French King, the vast territory drained by the Mississippi River, known in history as the Louisiana Territory. LaSalle was made Governor of the new territory and planned much for the new kingdom of which he was about to become lord. He made a later journey by sea from the south, was shipwrecked off the coast of Texas in Matagorda Bay, and was assassinated by his own men near what is now Navasota, Texas, while trudging through the wilderness in his search for a way back to Canada. That was in 1687. A monument to his memory now stands in the Texas town near his final burial place.

By virtue of these expeditions France claimed the two great valleys of the Great Lakes and of the Mississippi River.

In 1763 France lost the Seven Years' War. By the peace treaty signed in that year she transferred to Spain her great expanse of American territory west of the Mississippi River then known as Louisiana, which included the present states of Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Missouri, Iowa, South Dakota, parts of Minnesota, North Dakota, Colorado, Wyoming, and Montana, also the key city of New Orleans on the east side of the Mississippi River. At the same time France ceded Canada to England, and also gave up all claim to the entire region south of the Great Lakes and east of the Mississippi River, the eastern part of which England already claimed to own by virtue of treaties of purchase from the Indians. Spain at the same time ceded Florida and West Florida to England.

England thus acquired undisputed title to all of North America (except Alaska) from Hudson Bay to the Gulf of Mexico, east to the Atlantic Ocean and west to the Mississippi, except the city of New Orleans. Spain, which lost the Floridas, gained all the rest of the continent from the Mississippi River west to the Pacific Ocean, and New Orleans.

The territory west of the Appalachians, south of the Great Lakes and east of the Mississippi, except the Floridas and New Orleans, became a part of the United States in 1783 as a result of the peace treaty between England and the United States at the end of the Revolutionary War. East and West Florida, which included the present state of Florida and the entire seaboard along the Gulf of

Mexico as far as the city of New Orleans on the Mississippi River, was transferred back to Spain by England at the same time. The brilliant exploits of George Rogers Clark in capturing the important posts of Kaskaskia and Vincennes with only a few hundred men assured that the United States should own this incalculably valuable western region, rather than that it should remain a part of Canada.<sup>4</sup>

But Clark's forces were insufficient to go on and capture the stronger English forts at Detroit, Michillimackinac, and along the southern shores of Lake Erie as far as Niagara Falls. The peace treaty specified that these be delivered to the United States, but they controlled the lucrative fur trade and England refused to surrender them until 1795, when the matter was finally adjusted, along with a number of other issues, by the Jay Treaty.

The southwest struck only one concerted blow in winning the war of the Revolution, but it was a decisive one. In 1780, Cornwallis was still marching unhindered across the seaboard Carolinas, and becoming bolder, had sent a column further west. At King's Mountain it was fired upon for three days from behind rocks and fallen trees by hardy western mountaineers who had apparently arisen from nowhere. When the entire column had been either destroyed or captured, the mountaineers and their leaders, John Sevier and Isaac Shelby, disappeared into their mountain valleys as quickly as they had come. Thereafter, Cornwallis could only withdraw again to the seacoast, where he was bottled up by Lafayette's forces, de Grasse's French fleet and Washington's army. He finally surrendered at Yorktown on October 19, 1781, thus ending the last major military operation of the war.

In 1800, Napoleon succeeded in his conquest of Spain, and by the

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<sup>4</sup> Gibault, a French Catholic priest, was responsible for the first surrender at Vincennes in the summer of 1778. After Clark's capture of Kaskaskia, Gibault hastened over to Vincennes and persuaded the local French settlement, who gathered at the little log Catholic Church, to take down the British flag and raise the flag of America. Hamilton, the British Vice-Governor, in Detroit, came down a few weeks later and recaptured Vincennes. He in turn was overthrown by George Rogers Clark on February 25th of the following year (1779). The first official in command of the Northwest Territory was Thomas Todd, of Kentucky, a forebear of Mrs. Abraham Lincoln.

treaty of peace the territory of Louisiana west of the Mississippi, and also the key city of New Orleans, were transferred back to France by Spain. But Napoleon considered that the key to his exploitation of Louisiana was San Domingo, which was in rebellion, and when he failed to pacify the island because of the heroic defense of Toussaint L'Ouverture, in a lightning change of policy he sold the entire region to the United States in 1803. The price paid by the United States was \$15,000,000 in cash and certain other considerations which brought the total cost to more than \$27,000,000; Napoleon used the money to help finance another of his dashing campaigns in Europe. His sale of the territory, which Spain had owned just thirty-seven years, was contrary to an agreement with Spain not to dispose of it.

The Spanish Floridas were acquired by the United States in two parcels. The western portion of West Florida revolted in 1810 when Spanish power was relaxed in the New World as a result of the Napoleonic wars in Europe. The region set up an independent government and was later annexed to the United States as part of the State of Louisiana, although Spain had not given up its claim to the region. In 1819, the King of Spain by treaty formally ceded to the United States "all the territories *which belong to him*, situated to the eastward of the Mississippi, known as East and West Florida." The words given in italics (by the author) were carefully selected to settle amicably and without loss of dignity to either party both the dispute as to Louisiana and the dispute as to the northern boundaries of the Floridas, which had been the source of perennial friction since the United States had first achieved independence. By this treaty the boundaries of Louisiana were also better defined, the United States relinquishing its claim to Texas, and Spain relinquishing its claim to the Oregon Territory north of California.

The settlement of the region west of the Appalachians and south of the Great Lakes proceeded from three directions, down from Canada, up the Mississippi River from New Orleans, and from the east through the gaps in the Appalachian Mountains.

The earliest Frenchmen to come from Canada were not settlers primarily, but Indian traders and *coureurs du bois* who followed the rivers in their light canoes as far as the Rocky Mountains. After them came more solid traders who established regular posts at Niag-



ara Falls, at Detroit, Mackinac Island, at Vincennes southwest of Detroit, and at Kaskaskia on the Mississippi near certain rich lead deposits which they discovered and exploited. Around the posts grew up small settlements. By 1760, large and picturesque *bateaux* paddled by as many as forty Frenchmen and Indians with red bandanas and coonskin caps were regularly transporting rich cargoes of furs across the Great Lakes, and coming back again with stores and articles of trade for the Indians.

The French who came up the Mississippi River from New Orleans likewise came at first in search of trade, but also eventually established settled posts at such points as Natchez and as far north as St. Louis. After them came other settlers, including the unfortunate Acadians from Nova Scotia whose tragic story is told in Longfellow's *Evangeline*. These and other Frenchmen already on the ground founded the many French plantations and family names which are still characteristic of the region.

The thirty-seven years of Spanish occupancy of Louisiana, from 1763 to 1800, left comparatively little mark on the region. The once vigorous Spanish colonial policy was by this time antiquated, Spain was never a good colonizer, and its rigid rules of trade only stifled the port of New Orleans. Its trade fell off, and a severe economic depression was the rule until the region was bought by the United States in 1803.

The most important immigration, that from the East through the passes of the Appalachian Mountains, was the last to come, and had hardly more than passed the crest of the westernmost mountain ranges in 1763, when England acquired undisputed title from France to the territory east of the Mississippi River. The tide, however, was rapidly swelling, and almost immediately a clash resulted between the land-hungry immigrants and a new phase of England's colonial policy. The issue, which proved an insoluble one, was one of the grievances which culminated in bringing the western regions into the Revolutionary War on the side of independence and against the Mother Country.

The administration of the western territory was principally put under the new English Governor established in Canada at Quebec, from whence communication by water into the interior region was

quicker than across the mountains from the Atlantic seaboard. At the same time Orders in Council announced that henceforth additional settlements were prohibited west of a line following, in general, the watershed of the mountains from Quebec south to the Gulf of Mexico, for the twofold purpose of protecting the English King's new Indian subjects who already inhabited the region, and to protect the highly lucrative fur trade, which a few years later netted England the handsome sum of 80,000 pounds a year via Quebec alone. The policy was incomprehensible to the colonists, who drew little profit from the fur trade, thought the Indians were fit only for extermination, and saw nothing in the policy but the closing off of the opportunity to settle those vastly fertile western regions which they felt was their birthright. The restrictions were somewhat relaxed in the northeastern part of the region just before the outbreak of the war, and private interests were very active in London from the very start seeking charters from the King for exploitation along lines which would have been more pleasing to the colonists, but the question was still burning when the opening of hostilities ended further debate. Dr. Franklin was away from America all but two years between 1757 and 1775, and a large part of his time was given to representing a syndicate of wealthy Pennsylvanians in London who wished special privileges for developing a large area in the West.

During the war immigration slowed down for a time, for the Indians, as a result of England's policy, were hostile to the Americans from the East. After the treaty of peace the powerful tribes south of the Great Lakes were still more or less persistently kept in a hostile frame of mind by the English traders from Detroit, and the powerful Cherokee tribes and their allies south of the Ohio River also resisted the often ruthless methods of the first Yankee settlers. Nevertheless the fertile eastern Tennessee region was sufficiently populated by 1784 to attempt to establish the separate state of Franklin; the city of Knoxville on the Holston River was first settled in 1786. To the north on the headwaters of the Ohio River, Pittsburgh had been an important trading-post for many years before the war; in the last days of the war, settlers from across the mountains began floating down the river on great rafts and settled at the fertile mouths of the Muskingum, the Sciota and other rivers of southern

Ohio, and in the grass-lands of Kentucky. The ancestors of Charles G. Dawes, Vice-President of the United States under President Coolidge from 1925 to 1929, were among the first settlers of Marietta, which was founded at the mouth of the Muskingum River in 1788.

The more detailed stories of various parts of the region west of the Appalachian Mountains are told in other parts of this book in connection with the stories of other events and personages with which they became intimately related as time went on. The story of the Northwest Ordinance, by which the northern part of the region was governed, is told in the chapter on the Continental Congress; the story of the southern region is in the chapter on North Carolina and the Constitution and in the sketch of William Blount.

## II

### SUCCESSIVE STEPS IN OUR CONSTITUTIONAL PROGRESS

**T**HE *Mayflower* compact drawn up and signed on November 21, 1620, by forty-one of the one hundred and two passengers of that historic vessel before they landed at Plymouth thirty days later, is generally referred to as the first agreement of a constitutional nature executed and signed by any of our people. It read as follows:

"In ye name of God Amen. We whose names are underwriten, the loyall subjects of our dread soveraigne Lord James, by ye grace of God, of great Britaine, franc, & Ireland king, defender of ye faith, etc.,

"Haveing undertaken, for ye glorie of God, and advancemente of ye christian faith and honour of our king & countrie, a voyage to plant ye first colonie in ye Northerne parts of Virginia, doe by these presents solemnly & mutually in ye presence of God, and one of another, covenant, & combine our selves togeather into a civill body politick; for our Labor ordering, & preservation & furtherance of ye ends aforesaid; and by virtue hearof to enacte, constitute, and frame such just & equall Lawes, ordinances, Acts, constitutions, & offices, from time to time, as shall be thought most meete & convenient for ye generall good of ye colonie: unto which we promise all due submission and obedience. In witnes whereof we have here under subscribed our names at Cap Codd <sup>1</sup> ye 11 of November, in ye year of ye raigne of our soveraigne Lord king James of England, franc, & Ireland ye eighteenth, and of Scotland ye fiftie fourth. Ano; Dom. 1620."

Strictly speaking, however, this "compact" was not a constitution. It was in form and spirit a Separatist church covenant, recognizing the sovereignty of the English King, and merely promising submis-

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<sup>1</sup>The *Mayflower* compact was signed in the harbor of what is now Provincetown, Mass. John Quincy Adams said of it: "This is perhaps the only instance in human history of that positive original social compact which speculative philosophers have imagined as the only legitimate source of government."

sion and obedience to such laws and ordinances as should subsequently "be thought most fit and convenient for the general good." It established no government, and was signed only by a minority of the male passengers (the future freeholders of the colony, and not including servants or other "lesser" persons). Under the English common law it would perhaps have been enforceable as a contract between the signers thereof, but it may be doubted whether it was in any legal way binding on others who did not sign, or who came to the colony later.

The *Mayflower* compact was rather a declaration of intention than a constitution, but nineteen years later in 1639, three Connecticut towns, Hartford, Windsor,<sup>2</sup> and Wethersfield, all near each other in Hartford County, formed a political organization which James Bryce, the historian and one-time ambassador from England to America, declared to be the oldest truly political constitution in the world. Many of the ideas of that organization found their way into our present Constitution, chief of which was that supreme power should rest alone in the people. Though the citizens of these three communities all lived under royal control, no mention was made thereof in their political agreement, and, in local affairs at least, power was considered to rest in the people. The democratic idea was alive and operative even if unrecognized by the Crown of England. Each of the towns was equally represented in this common meeting, an idea in effect later, first in the Continental Congress, and later in the Senate of the United States.

Next came the New England Confederation, made up of delegates from New Haven, Massachusetts Bay, Connecticut, and Plymouth, known as the United Colonies of New England. Meetings were held in September of each year, when two commissioners from each of the colonies, or a total of eight in all, met to discuss their common problems. The disturbed state of Europe at that time gave English leaders enough problems to solve without being concerned by this independent movement on the part of a few struggling American colonies, who had been drawn together in the first instance by a common desire for mutual protection against attack by the sur-

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<sup>2</sup> Windsor was the birthplace about a hundred years later of Oliver Ellsworth, one of the makers of the Constitution.

rounding Indians and Dutch settlers at New York, then New Amsterdam, and the movement was perhaps encouraged at first as an aid to the Crown. The confederation existed from 1643 until 1684, when the stern opposition of the Royal Crown brought it to an end.

The next three steps towards unity on the part of the colonies were the two meetings held at Albany in 1677 and 1684, and the conference which met at New York City in 1690. All of these meetings were primarily for the purpose of planning some sort of united defense against the French on the north and their Indian enemies near by.

In 1696 William Penn came forward with a plan for a union of ten colonies. Again the object was merely a desire to form an organization which would be of more service to the Crown. Twenty members were to make up the congress; two from each of the colonies were to meet every two years to discuss matters of both war and peace, and a representative of the King was to preside at such meetings. There all complaints could be heard and deliveries made by one colony to another of all members of any colony who had sought to escape from one into the other. The Penn plan never became a reality.

In 1696 a commission called "Lords of Trade and Plantation," the primary purpose of which was to form some sort of control over American commerce, was organized.

In 1722 the Daniel Coxe plan, similar to the Albany plan of 1754, referred to hereafter, was proposed and twenty-nine years later in 1751 the Kennedy plan for a union of the colonies for defense against the Indians was discussed.

The most far-reaching and in many ways the most feasible of all the plans offered in the pre-revolutionary growth of the constitutional idea in America was the plan of Benjamin Franklin, known as the "Albany Plan" of 1754. Franklin was then at the height of his powers. He had already won fame as a great philosopher and was soon to enter upon his unrivalled career as a diplomat and statesman. Under the Albany plan a president-general appointed by the Crown was to rule over the colonial assembly, both the president-general and the assembly to be under the direct control of the King of England. English leaders were anxious to see the colonies more nearly united, for the acute issues which led to the war known in history as the

"French and Indian War," the American reflex of the continental "Seven Years' War," were then in the making and close colonial cooperation would be of distinct advantage in the coming conflict. Representation in the proposed colonial congress was to be based on the amount of taxes contributed. A minimum of two and not more than seven delegates from each colony was to make up the congress, from which idea evolved the plan for representation in the Continental Congress twenty years later. The Albany plan, however, was not adopted, for the King looked upon it as granting too much power to the people, who in turn felt that the King himself had too much power over them. Twenty-seven leaders from New York, New Hampshire, Massachusetts, Connecticut, Rhode Island, Pennsylvania, and Maryland nevertheless attended the meeting which was held in Albany on June 12th and lasted for three months. Among the number was Richard Peters, the renowned rector of Old Christ Church in Philadelphia.

Six years later in 1760, Dr. Samuel Johnson, President of King's College in New York, suggested to the Archbishop of Canterbury a plan for American union. Dr. Johnson was the father of William Samuel Johnson, one of the delegates to the Constitutional Convention from Connecticut, who also became president of Columbia College, the new name for King's College. The conquest of Canada was proposed in this plan, as well as ideas for ridding the colonies of unjust taxes, though it was to be another five years before the first distinct anti-tax convention met.

As a result of the uprising on the part of the colonies over the Stamp Act issue, the congress known as the "Stamp Act Congress" met in New York City on October 7, 1765. The rustic and eloquent Patrick Henry had delivered his powerful oration against George III and his tax plan on the 20th of the previous May down at Williamsburg, Virginia. All of the thirteen states except New Hampshire in the north and Georgia, Virginia, and North Carolina in the south were represented among the twenty-eight delegates who assembled in New York with Timothy Ruggles, of Massachusetts, as chairman. Three of the leaders of that congress who later had a vital part in the making of our present Constitution were John Dickinson, of Delaware; William Samuel Johnson, of Connecticut, and the young

and brilliant John Rutledge, of South Carolina. Johnson served on the committee which wrote the address sent to the King, and young Rutledge, the baby member of the convention, served on the committee which composed the one sent to the English House of Lords. Another delegate was young Robert R. Livingston, of New York. Incidentally, this was the first time the word "Congress" was used in describing any national gathering of representatives of the colonies.

The address issued to the colonies was written by John Dickinson, who refused later to sign the Declaration of Independence, although it was the logical result of the protest set in motion by that congress. At that period of our history, any suggestion of independence would have been looked upon as treason of the worst sort.

Eight years later, in 1773, Franklin suggested that a congress be called similar to the one which did meet one year later. Franklin also came forward on July 21, 1775, with another plan for colonial coöperation, similar to the one he had proposed at Albany twenty-one years before, which also failed to arouse much interest, but Dickinson drew largely from it a few years later when he and his committee devised the short-lived Articles of Confederation.

Such were some of the decisive steps in the genealogical development of the constitutional idea in America. It must be remembered that our people at that period in American history were largely of English origin, and most of them were natives of the motherland. The English love of liberty and independence was the silent yeast at work in our body politic, which found its fruitage in the great events which produced first our Declaration of Independence.

But it must be emphasized that the original movements above sketched were entirely or primarily directed to joint solution of local problems with which it was felt the King could not adequately deal, and at the last were intended only as means for determining on joint action and for the orderly expression of grievances against a higher authority. The idea of an agreement for concerted action by thirteen independent states was still for the document called the Articles of Confederation, while the idea of a central government independent of its component states and deriving its author-



ity from a third group, the people, was to await the hands of the Constitution.

The further development of the constitutional idea between the time of the adoption of the Articles of Confederation and the calling of the Philadelphia Constitutional Convention is discussed at other appropriate points in this volume, particularly in the sketches of the lives of James Madison, of Virginia, and of Charles Pinckney, of South Carolina.

### III

#### THE CONTINENTAL CONGRESS

THE life of the Continental Congress extended from its first session in Philadelphia, on September 5, 1774, until its *sine die* adjournment in New York on March 2, 1789.

The history of the Congress was divided into two periods. The first, called the *de facto* period, extended from September 5, 1774, until March 1, 1781. During that interim the Congress had no legal status. On March 1, 1781, the Articles of Confederation were finally ratified by all the states and thereby became effective, and the Continental Congress thereafter could claim a *de jure* existence.

It had first met on the call of Massachusetts, in an effort through common council of the colonies to reach an amicable agreement on the great problems which then perplexed them. Committees of correspondence in the different colonies had exchanged opinions on the state of the colonies as early as March 12, 1773, when the Virginia legislature, pursuant to a resolution introduced by Dabney Carr, appointed the first such committee, and the Congress came out of that correspondence. Massachusetts has been given the credit by most historians for first suggesting the conference, known in history as the "first session of the Continental Congress," although Virginia anticipated Massachusetts's action by sending out letters suggesting such a conference on June 3, 1774, two days before Massachusetts issued its call.

The first Continental Congress met in Carpenters' Hall, Philadelphia, in a building which is still standing and revered as a national shrine, and remained in session until October 26th of that year. Fifty-four delegates were present when it was called to order. Peyton Randolph, of Williamsburg, Virginia, who had won renown as a speaker of the famed Virginia House of Burgesses, was chosen President, becoming thereby the first American executive officer, or our first unofficial President. Charles Thomson, of Philadelphia, was chosen Secretary, which position he held during the entire fourteen and one-half years of the life of the Congress. Thomson

was a native of Ireland, a classical scholar and man of means who accepted no pay for his work. He performed his last official service when he went from New York to Mount Vernon on April 16, 1789, and notified Washington of his official election as President, after the new Congress had met and declared him elected in the manner provided for under the new Constitution.

It was not the intention of the members of that first Continental Congress to inaugurate a new form of government, but to protest against what was regarded as the invasion of the rights of the Colonies. Patrick Henry and John Jay, both members of the Congress, clashed in their viewpoints as to what should be done. Henry was fiery in his attacks on England and wanted independence at once, while Jay was for seeking a conciliatory means of adjusting the difference which had arisen between the Colonies and Mother England. The Congress among other things finally sent a message to England insisting that the wrongs inflicted upon the Colonies must be righted in the famous Declaration of Rights of October 14, 1774. John Dickinson wrote the message, which was sent to the King by way of the Governor of Quebec in Canada.

Henry Middleton, of South Carolina, was elected President toward the close of its first session in place of Randolph. Middleton was the father of Arthur Middleton, a signer of the Declaration of Independence and was the father-in-law of Pierce Butler, also of South Carolina, one of the makers of the Constitution. He was related by marriage to the famous Pinckney family of South Carolina.

As the situation grew more tense, a demand arose for a second session of the Congress, which convened in Philadelphia on May 10, 1775. Peyton Randolph, of Virginia, was again chosen President, but served for only two weeks, when he was called back to Virginia to preside over the House of Burgesses.

The session proved to be a most momentous one. The battle of Lexington had been fought only a few weeks before, the guns had been fired at Concord which, in the language of Emerson, "were heard around the world," and the Revolution was on. A few weeks later, on June 15th, Colonel George Washington, of Virginia, was chosen as the head of the Colonial army and plans were made to

oppose aggressively the tax plans of England. At the time separation from the mother country was still not seriously considered, and if it had been, a majority of the American people would have opposed it, but armed rebellion at least was now in full swing.

As it was, when the war ended a large number of Americans were to remain loyal to the King, and after the war more than 30,000 left America to join their English cousins in Canada, and to settle in Nova Scotia, New Brunswick and elsewhere. They left not only in order to continue their allegiance to their King, but to escape persecution at home on account of their Tory allegiance. There is today an organization known as the "Loyalists" in Canada whose members take a pride in their ancestors' loyalty to England, equal in many ways to the pride of the Sons and Daughters of the American Revolution.

But the advocates of independence eventually overcame the objections of the other delegates, and the next step was the historic Declaration of Independence, which had its origin, was signed and proclaimed to the world during this second session of the Congress. The committee which drafted it consisted of five members: Thomas Jefferson, of Virginia; John Adams, of Massachusetts; Benjamin Franklin, of Pennsylvania; John Sherman, of Connecticut, and R. R. Livingston, of New York. Unfortunately, Livingston was called home before the Declaration was signed and his name is not affixed to it.

When the vote was first taken on the Declaration of Independence the delegates from South Carolina and Delaware opposed it, Robert Morris, of Pennsylvania, was reluctant to sign, and the New York delegates did not sign it until nearly a month after it had been adopted. One member of the Congress, John Dickinson, of Delaware, known as the "pen of the revolution" for the prominent part he had taken in the events which culminated in the Declaration of Independence, openly opposed it and also refused to sign. Fifty-six names were finally affixed to the great declaration. The delegates from Georgia and South Carolina were responsible for the absence of any reference therein to slavery, just as they were responsible for keeping the word out of the Constitution eleven years later.

The Congress officially approved the Declaration of Independence on July 4th, though the historic signatures thereto were affixed at different times after that date. One hundred and fifty years later, on July 4, 1926, England published its own Declaration of Equality, whereby all the nations which made up the British Empire were declared equal within the Empire.

When the committee was appointed on June 11th to draft the Declaration of Independence, a similar committee was appointed to draft the historic Articles of Confederation. John Dickinson, of Delaware, who later presided at the Annapolis conference, was the chairman of that committee.

The Congress continued to meet at Philadelphia until December 20, 1776. John Hancock, the first Governor of Massachusetts and the man whose bold signature to the Declaration of Independence is universally known, became President on May 24, 1775, and served until November 1, 1777. He was thus President when the Declaration of Independence was signed.

A short session of Congress was held in Baltimore on the 20th of December, 1776. Philadelphia again served as its seat from March 5, 1777, until September 18th of that year, but the fortunes of the rebellious colonies were at a low ebb, New York and Philadelphia, America's two greatest cities, had fallen into the hands of the enemy, and the Congress did not feel safe in remaining long at one place with British soldiers pressing hard on every side. On September 27, 1777, the Congress was in session for one day only at Lancaster, Pennsylvania, and on September 30th it convened at York, Pennsylvania, where it remained until June 27, 1778.

Henry Laurens, of South Carolina, who went to France for the Colonies and there suffered much for his loyalty, was made president of the Congress on November 1, 1777. He served the winter of the critical period at Valley Forge, whose horrors were only tempered by the hope which came when the French alliance of February 6, 1778, was consummated by the versatile Franklin. Washington was given all the powers of a dictator by the Congress and ruled America in all but name, being more completely in power than when he became president eleven years later. The Congress re-

sumed its meetings at Philadelphia on July 2, 1778, and that city remained the capital of the nation until June 21, 1783.

John Jay, of New York, was the next President of the Congress. He began his service on December 10, 1778, and remained in that office until September 28th of the next year, when he was succeeded by Samuel Huntington, of Connecticut.

It was November 15, 1777, before the committee appointed in 1776 to draft the Articles of Confederation made its report, and the Articles had not been formally approved for submission to the states until July 9, 1778, or more than two years after the committee had been appointed to draft them. New Hampshire approved the Articles on August 9, 1778, being the first state to ratify them. But they required the signatures of all the states to become effective, and the approval of Maryland, the last state to sign, did not take place until March 1, 1781, or nearly five years after the committee had first been appointed to draft them. The *de facto* government then came to an end and a *de jure* government operating under our first national constitution began.

Much learned and technical dispute has arisen as to who was our first *de jure* President, with much weight being given to the claim of John Hanson, of Maryland, who had signed the Constitution with Daniel Carroll on behalf of that state. We remind the reader that Huntington held the Presidency when the Articles of Confederation became effective and that he was succeeded as President on July 10th by Thomas McKean, of Delaware, after Hanson and Carroll had signed the Articles on the previous March 1st. McKean, a signer of the Declaration of Independence, remained as President of the United States in Congress assembled until November 5, 1781, when Hanson succeeded him, eight months after he had signed the Articles of Confederation.

Hanson was succeeded by Elias Boudinot, of New Jersey, who became President of the Congress on November 4, 1782. One year later, on November 26, 1783, the Congress convened at Princeton, having made a sudden exit from Philadelphia when the very lives of its members were menaced by a group of eighty private soldiers who, led by one of their former officers, marched into Philadelphia and angrily demanded their long past-due pay for services rendered dur-

ing the war. Ragged and hungry, the soldiers had departed only when the persuasive voice of Hamilton, a member of the Congress and himself a former soldier, begged them to refrain from violence.

Princeton has the distinction of being the only American college whose halls once harbored the capitol of the nation. The Congress held its sessions in the old Nassau Hall, where Madison and many other of our early leaders had been educated, from June 30, 1783, until November 4th of that year.

Twenty-two days later the Congress again moved southward and met at Annapolis. It was there, in the old state capitol, that the triumphant Washington came down from New York on December 23, 1783, and solemnly surrendered to it the commission as head of the army which he had accepted more than eight years before. There the sword he had so marvelously defended was delivered to Thomas Mifflin, President of the Congress. Mifflin had been a party to the Conway Cabal, a secret movement of a few years before to unseat Washington as military leader.

The Congress remained in Annapolis until June 3rd of the following year. On a bronze tablet on the wall outside the room in the old capitol where the little band of patriots met to welcome Washington, the visitor may read these words from Mifflin's address of welcome: "We join you in commending the interest of our dear country to the protection of Almighty God, beseeching Him to dispose the hearts and minds of its citizens to improve the opportunity afforded them of becoming a happy and respectable nation; and for you we address to Him our earnest prayers that a life so beloved may be fostered with all His care; that your days may be as happy as they have been illustrious and that He will finally give you that reward which this world cannot give."

Mifflin served as President of the Congress from November 3, 1783, to November 30, 1784. As such, he presided over the small delegation which made up the Continental Congress on January 10, 1784, when the peace treaty which had been sent from England four months before was ratified, after having been long delayed by the absence of a quorum.

The next session of the Congress was held at Trenton, New Jersey, from November 1, 1784, until December 24th of that year. Trenton

was also to serve as the capital of the United States for a short time during the incumbency of John Adams, when yellow fever raged in Philadelphia not far away.

Richard Henry Lee, the eloquent Virginian, who had raised his withered hand in Congress more than eight years before and declared that "these colonies are and of right should be free and independent," was chosen to succeed Mifflin as President on November 30, 1784, and presided over the Congress until June 6, 1786. During this time, on January 11, 1785, New York City first became its seat and so remained until the old Congress came to an end. Nathaniel Gorham, of Boston, who was destined to have a large part in the Convention, which convened a few months after he left office on February 2, 1787, took Lee's place.<sup>1</sup> He was followed by Arthur St. Clair, of Pennsylvania, who served as President from February 2, 1787, until January 22, 1788, when Cyrus Griffin, the third Virginian to be President, succeeded him.

St. Clair served two years later as the first Governor of the Northwest Territory. Failing in his efforts to put an end to the Indian outrages, he was succeeded as military commander by "Mad Anthony Wayne," whose best monument is the city of Fort Wayne, Indiana, located near the scene of his great victory over the Indians.

Griffin was the President of the Continental Congress when it flickered out like a candle burned to the socket on March 2, 1789. There had been no actual quorum since October 21st of the previous year, and from the death of the Continental Congress until April 30th of that year, when Washington was inaugurated as President, there was no organized national government in the United States.

While the Continental Congress was largely impotent during its best years, two great acts must always redound to its credit in addition to the difficult task of conducting the war. First, of course, was its treaty of peace with England. Second only to the ratification of the peace treaty in its far-reaching effect on American history was its enactment on July 13, 1787, of the famous North-

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<sup>1</sup> Gorham was chosen in the place of John Hancock who, on account of illness, refused to accept when again chosen as President of the Congress.



west Ordinance. The Philadelphia Convention, which drafted the new Constitution, was then in session. That ordinance enacted the plan for the government of the Northwest Territory, and has continued in effect and is today the plan used by the United States in governing all its territories. Among those most instrumental in its enactment were Richard Henry Lee and William Grayson, who became the first United States Senators from Virginia two years later under the new government, and Nathan Duane, of Massachusetts.

The Northwest Ordinance, enacted to govern the vast region which today includes the states of Ohio, Illinois, Indiana, Michigan, Wisconsin, and a portion of Minnesota, embraced many features of far-reaching consequence. Among other rights, it guaranteed to all inhabitants of the region religious freedom, equal right of inheritance to both sexes, a public school system, inviolability of the obligation of contracts, no paper money, and no emission of money on the part of any state. It was an improvement over the Federal Constitution in that it prohibited human slavery forever within that territory, which explains why runaway slaves before the Emancipation Proclamation of Lincoln welcomed the sight of the Ohio River, the southern boundary of the Northwest Territory. The mural decorations in the state capitol of Ohio, at Columbus, impressively portray the salient features of the Northwest Ordinance.

Wise provision was also made for five states to be made out of the region, rather than the ten states which Jefferson had proposed in Virginia's first offer to the nation. Jefferson had suggested the musical names of Sylvania, Michigania, Chersonesus, Assenipia, Mesopotamia, Illinois, Saratoga, Washington, Polypotamia, and Polisipia for his proposed ten states.

The reader of today can visualize the Continental Congress, its functions and limitations, by thinking of it as a meeting-place for a league of states. John Adams called its members "ambassadors of the states," a term Madison applied later to members of the United States Senate. Membership in the Continental Congress was made up of delegates chosen by the several state legislatures, except that two of the states, Connecticut and Rhode Island, elected their members by popular vote. Each state was allowed not over

seven nor less than two members. The vote was cast by states, each state having one vote when a ballot was taken on any subject. The vote of nine states was necessary to pass any act and a unanimous vote was required to change any of the Articles of Confederation.

The Continental Congress began as a body of great dignity made up of the great men of that day, and as long as the enthusiasm of war was on and the spirit of victory filled the air, the leading men of the country sought a place in its membership. However, after the Revolution was over and independence had been achieved, the spirit of unity which had prevailed gradually weakened and each state became more and more interested in its individual problems. They thereafter preferred leadership at home to long absence attending a Congress with no real powers.

While much authority was given under the Articles of Confederation to plan for both war and peace, the Congress had no actual power to put into execution any of its acts. There was no executive head. The only national revenue came from requisitions levied upon the several states, which were not always paid, and there was no actual authority anywhere to carry out any plans, however ambitious, which might be proposed.

The one big and compelling weakness of the government was the need of funds to provide for a growing national government and to pay the expense of the war which had been won. Unsuccessful efforts were made to amend the Articles to permit the enactment of a national tariff act for revenue. The first effort was defeated by the vote of Rhode Island after the other twelve states had approved it; Virginia withdrew its approval when it was found that Rhode Island had rejected the change. Rhode Island had profited greatly as a state of ports through which much commerce had come, and refused to vote away such a local privilege as the collection of taxes from vessels coming from abroad. The last effort to enact tariff legislation was defeated a few years later by the vote of New York, where local pride and selfishness again prevented the enactment of national legislation.

The Continental Congress broke under the weight of its own weaknesses and the growing indifference of the states. Yet the plans for

the convention which later wrote the Constitution at first met with its resentment. Rufus King, of Massachusetts, who later changed his views and became a great leader on the floor of the Constitutional Convention, was the spokesman for the small group in the Congress who felt that the states had overstepped themselves in arranging for the Constitutional Convention without the approval of the Congress. But when it was evident that the convention would be held anyway, the Continental Congress, on February 21, 1787, two years after the historic meeting at Alexandria, Virginia, voted to call the Constitutional Convention. The grand committee of the Congress which acted on the matter had among its members Blount, of North Carolina, who opposed the plans for the convention and later only reluctantly signed the Constitution as a substitute delegate. It is doubtful that such steps would have been taken if the members of the Congress had realized that their action meant the death-knell of their own body.

But while we criticize the Continental Congress today, we must not forget that in the beginning there were those in it who aided in developing the first idea of the unity of the states, and in the growth of the sentiment which finally flowered in our present national government. We must also remember that the Congress came into existence at a time of crisis when thirteen small and separate republics were each seeking a way of escape from a common affliction, as the proposed tax plans of England were then regarded. The form of government under which it endeavored to function seems no government at all today, and yet we must not forget that in its time it was such a government as had never before existed, and had involved voluntary concessions by thirteen independent states such as were hitherto unknown.

#### DECLARATION OF INDEPENDENCE

(The Declaration of Independence was adopted by the Continental Congress, at Philadelphia, on July 4, 1776, and was signed by John Hancock as President, and by Charles Thomson, as Secretary. It was published first on July 6th in the *Pennsylvania Evening Post*. A copy of the Declaration, engrossed on parchment, was signed by members of Congress on and after August 2, 1776.)

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them

with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold those truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He had refused his Assent to Laws, the most wholesome and necessary for the public good.

He had forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained, and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.

He has kept among us, in times of peace, Standing Armies, without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation; For quartering large bodies of armed troops among us; For protecting them by a mock Trial from punishment for any Murders which they should commit on the Inhabitants of these States; For cutting off our Trade with all parts of the world; For imposing Taxes on us without our Consent; For depriving us in many cases of the benefits of Trial by jury; For transporting us beyond Seas to be tried for pretended offences; For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies; For taking away our Charters, abolishing our most valuable Laws and altering fundamentally the Forms of our Governments; For suspending our

own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has executed domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms. Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the tie of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Ab-

solved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

## SIGNERS OF THE DECLARATION OF INDEPENDENCE

<i>Name, Delegate from</i>	<i>Vocation</i>	<i>Birthplace</i>	<i>Born</i>	<i>Died</i>
Adams, John (Mass.)	Lawyer	Braintree, Mass.	1735, Oct. 30	1826, July 4
Adams, Samuel (Mass.)	Brewer	Boston, Mass.	1722, Sept. 27	1803, Oct. 2
Bartlett, Josiah (N. H.)	Phys. Law	Amesburg, Mass.	1729, Nov. 21	1795, May 19
Braxton, Carter (Va.)	Farmer	King and Queen, C. H. Va.	1736, Sept. 10	1797, Oct. 10
Carroll, Charles (Md.)	Lawyer	Annapolis, Md.	1737, Sept. 20	1832, Nov. 14
Chase, Samuel (Md.)	Jurist	Princess Anne, Md.	1741, April 17	1811, June 19
Clark, Abraham (N. J.)	Law. Fin.	Elizabeth, N. J.	1726, Feb. 15	1794, Sept. 15
Clymer, George (Pa.)	Merchant	Philadelphia, Pa.	1739, Mar. 16	1813, Jan. 23
Ellery, William (R. I.)	Jurist	Newport, R. I.	1727, Dec. 22	1820, Feb. 15
Floyd, William (N. Y.)	Soldier	Brooklyn, N. Y.	1734, Dec. 17	1821, Aug. 4
Franklin, Benjamin (Pa.)	Print. Pub.	Boston, Mass.	1706, Jan. 17	1790, Apr. 17
Gerry, Elbridge (Mass.)	Merchant	Marblehead, Mass.	1744, July 17	1814, Nov. 23
Gwinnett, Button (Ga.)	Merchant	Down Hatherly, Eng.	1732	1777, May 19
Hall, Lyman (Ga.)	Phys. Jurist	Wallingford, Conn.	1724, Apr. 12	1790, Oct. 10
Hancock, John (Mass.)	Merchant	Quincy, Mass.	1737, Jan. 12	1793, Oct. 8
Harrison, Benjamin (Va.)	Farmer	Berkeley, Va.	1726, Apr. 5	1791, Apr. 24
Hart, John (N. J.)	Farmer	Stonington, Conn.	1707	1779, May 11
Hewes, Joseph (N. C.)	Merchant	Kingston, N. J.	1730, Jan. 23	1779, Nov. 10
Heyward, Thos. Jr. (S. C.)	Law. Farm.	St. Luke's P. S. C.	1746, July 28	1808, Mar. 6
Hooper, William (N. C.)	Lawyer	Boston, Mass.	1742, June 17	1790, Oct.
Hopkins, Stephen (R. I.)	Mer. Judge	Providence, R. I.	1707, Mar. 7	1785, July 13
Hopkinson, Francis (N. J.)	Jurist	Philadelphia, Pa.	1737, Sept. 21	1791, May 9
Huntington, Samuel (Conn.)	Jurist	Windham C., Conn.	1731, July 5	1826, Jan. 5
Jefferson, Thomas (Va.)	Lawyer	Old Shadwell, Va.	1743, Apr. 13	1826, July 4
Lee, Richard Henry (Va.)	Farmer	Stratford, Va.	1732, Jan. 20	1794, June 19
Lee, Francis Lightfoot (Va.)	Farmer	Stratford, Va.	1734, Oct. 14	1797, Jan. 21
Lewis, Francis (N. Y.)	Merchant	Landaff, Wales	1713, Mar.	1803, Dec. 30
Livingston, Phillip (N. Y.)	Merchant	Albany, N. Y.	1716, Jan. 15	1778, June 12
Lynch, Thomas, Jr. (S. C.)	Farmer	Winyah, S. C.	1749, Aug. 5	1779, at sea
McKean, Thomas (Del.)	Law. Sold.	New London, Pa.	1734, o.s. Mh 19	1817, June 24
Middleton, Arthur (S. C.)	Farmer	N. Charleston, S. C.	1742, June 26	1787, Jan. 1
Morris, Lewis (N. Y.)	Farmer	N. Y. City (Bronx)	1726, Apr. 8	1798, Jan. 22
Morris, Robert (Pa.)	Merchant	Liverpool, Eng.	1734, Jan. 20	1806, May 8
Morton, John (Pa.)	Jurist	Ridley, Pa.	1724	1777, Apr.
Nelson, Thos., Jr. (Va.)	Soldier	Yorktown, Va.	1738, Dec. 26	1789, Jan. 4
Paca, William (Md.)	Jurist	Abingdon, Md.	1740, Oct. 31	1799, Oct. 23
Paine, Rob't. Treat (Mass.)	Rev. Jurist	Boston, Mass.	1731, Mar. 11	1814, May 12
Penn, John (N. C.)	Lawyer	N. Port Royal, Va.	1741, May 17	1788, Sept. 14
Read, George (Del.)	Jurist	N. No. East, Md.	1733, Sept. 18	1798, Sept. 21
Rodney, Caesar (Del.)	Jurist	Dover, Del.	1728, Oct. 7	1784, June 29
Ross, George (Pa.)	Jurist	New Castle, Del.	1730, May 10	1779, July 14
Rush, Benjamin (Pa.)	Physician	N. Philadelphia, Pa.	1745, Dec. 24	1813, Apr. 19
Rutledge, Edward (S. C.)	Law. Sold.	Chr. Ch. Par., S. C.	1749, Nov. 23	1800, Jan. 23
Sherman, Roger (Conn.)	Lawyer	Newton, Mass.	1721, Apr. 19	1793, July 23
Smith, James (Pa.)	Lawyer	Ireland	1713	1806, July 11
Stockton, Richard (N. J.)	Lawyer	N. Princeton, N. J.	1730, Oct. 1	1781, Feb. 28
Stone, Thomas (Md.)	Lawyer	Charles Cy., Md.	1743	1787, Oct. 5
Taylor, George (Pa.)	Iron M'fr.	Ireland	1716	1781, Feb. 23
Thornton, Matthew (N. H.)	Phys. Jurist	Ireland	1714	1803, June 24
Walton, George (Ga.)	Jurist, Sold.	Pr. Edw. Cy., Va.	1741	1804, Feb. 2
Whipple, William (N. H.)	Mer. Jurist	Kittery, Me.	1730, Jan. 14	1785, Nov. 28
Williams, William (Conn.)	Mer. Jurist	Lebanon, Conn.	1731, Apr. 23	1811, Aug. 2
Willson, James (Pa.)	Jurist	Carskerdo, Scotland	1742, Sept. 14	1798, Aug. 28
Witherspoon, John (N. J.)	Coll. Pres.	Gifford, Scotland	1723, Feb. 5	1794, Nov. 15
Wolcott, Oliver (Conn.)	Jurist, Sold.	Windsor, Conn.	1726, Dec. 1	1797, Dec. 1
Wythe, George (Va.)	Lawyer	N. Back River, Va.	1726	1806, June 8

## THE ARTICLES OF CONFEDERATION

To all to whom these Presents shall come, We, the undersigned Delegates of the States affixed to our names, send greeting: Whereas, the Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the year of our Lord, 1777, and in the second year of the Independence of America, agree to certain Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz.:

Articles of Confederation and Perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Article I. The style of this Confederacy shall be "The United States of America."

Article II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States—paupers, vagabonds, and fugitives from justice excepted—shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, imposition, and restriction as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property, imported into any State, to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties, or re-



striction shall be laid by any State on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any State shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor, or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

Article V. For the more convenient management of the general interest of the United States, the delegates shall be annually appointed, in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States for which he, or another for his benefit, received any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in any meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from an attendance on Congress, except for treason, felony, or breach of the peace.

Article VI. No State, without the consent of the United States in Congress assembled, shall send an embassy to, or receive an embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into and how long it shall continue.

No State shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in Congress assembled with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States in Congress assembled for the defence of such a State or its trade; or shall any body of forces be kept up by any State in time of peace, except such number only as, in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and have constantly ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nations of Indians to invade such a State, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

Article VII. When land forces are raised by any State for the common defence, all officers of, or under, the rank of colonel shall be appointed, by the legislature of each State respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general warfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

Article IX. The United States in Congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners as their own people are subject to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed

to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as Congress shall direct, shall in the presence of Congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which Congress shall judge sufficient, or, being present, shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner above prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress and lodged among the acts of Congress for the security of the parties concerned; provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" provided, also, that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions, as they may respect such lands, and the States which passed such grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

The United States in Congress assembled shall also have the sole exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the States; provided that the legislative right of any State within its own limits be not infringed or violated—establishing or regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces—and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated “A Committee of the State,” and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years—to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money or emit bills on credit of the United States, transmitting every half-year to the respective States an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of what inhabitants in such States; which requisition shall be binding, and thereupon the legislatures of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled; but if the United States in Congress assembled shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number

than its quota, and that any other State should raise a larger number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of same; in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine States assent to the same, nor shall a question on any other point except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal when it is desired by any delegate, and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislature of the several States.

Article X. The committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, shall from time to time think expedient to vest them with, provided that no power be delegated to the said committee for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Article XI. Canada, according to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Article XII. All bills of credit emitted, money borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

Article XIII. Every State shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.

And whereas, It hath pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in Congress to approve of, and to authorize us to ratify, the said Articles of Confederation and perpetual union. Know ye that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every one of the said Articles of Confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual. In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord, 1778, and in the 3rd year of the Independence of America.<sup>2</sup>

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<sup>2</sup>These Articles were not ratified by all the States until March 1, 1781, when the delegates of Maryland, the latest in ratifying, signed for her.

## IV

### A CONSTITUTION OR CHAOS

**A** DEPRESSION as severe as existed in the United States from 1929 to 1935 faced the struggling American colonies from 1784 to 1789. The colonies had had a great revival of business after the successful close of the Revolutionary War, similar to that which followed the World War, and it in turn was succeeded by our first great depression. The post-war let down was to a large extent world-wide: in France the crops were poor and the winters hard, the country people were crowding into the cities, which could not feed them, and by 1785 the first advance rumblings of revolution were making themselves heard in and about Paris.

John Fiske, the historian, very properly called it "the critical period in American history." Independence had been won, but victory over the mother country had not brought with it either internal order, foreign trade, or any lasting domestic prosperity. The colonies had not fought to secure reforms, as is the case with many revolutions, but had successfully striven to prevent oppression in the form of a new system of taxation, which successive English parliaments and ministries had sought to thrust upon them. The revolutionary fathers had not gone to war for abstract political theories. They had fought, not to win a new form of government, but to prevent a change in their peaceful colonial life. Our best historians agree that the leaders of thought in America at that time were defending a vital principle, long dear to English-speaking people, but independence had not been the first objective of the struggle. It is true that in addition to thirteen struggling young republics, each clinging to the Atlantic shores, there emerged with them a central government, but it was not yet one and indivisible; for while the experiences of the colonies had given them excellent training in managing their local affairs, it



had also bred a narrow provincialism, which made national coöperation very difficult.

The solidarity which had prevailed during the weary days of war, when peace had been won, soon gave way to a return to individual interests and concern, and a pride in local colonial achievement. Rugged individualism raised its head. The rivalries which had existed before the war rose up again, and the citizen of one colony again had more pride in that citizenship than in being the citizen of a united group of colonies. It was entirely proper for the Continental Congress to exercise, as a *de facto* body, prerogatives which would bring victory in time of war when an enemy stood at the gate; but when the tumult and the shouting had died and the English captains and colonels had departed, a new attitude arose. Again it was every state for itself and the nation as a whole take the hindmost. So low had the national, as distinct from the state spirit, fallen that the Continental Congress could scarcely get together a quorum of its delegates to consider the peace treaty which John Adams and others sent back from England, and it was more than four months before it could be ratified by the Continental Congress.

The Congress was then operating under the Articles of Confederation, which had not been finally approved by all the states until less than a year before the battle of Yorktown. It was a body possessing great privileges, but with limited powers. It could declare war, but it had no power to raise an army or to collect the taxes necessary to carry it on. It could render judicial opinions, but it had no power to enforce them. It could request of the states that they pay specified sums to it, but it had no means of enforcing its requisitions. Only a small portion of the sums due France and others for money loaned during the war could promptly be paid, and the United States had to default in repaying money that had made possible their victory. When the Congress called for eight million dollars to meet the rising tide of debt, less than one-half a million dollars was paid, and most of that by New York and Pennsylvania. George Washington correctly analyzed the situation at the time of Shays' Rebellion in the winter of 1786-7, when a friend had written him to express the hope that the central government

could perhaps lend its "influence" to help solve the difficulties in Massachusetts. "Influence," Washington wrote back in despair, "is not *government*."

In 1785 the economic crisis became so acute that Washington, one of the great planters of his day, and perhaps the wealthiest man in America, felt the pinch of want. In a letter to his aged mother he frankly told her he had less money at that period of his life than he had had at any time since he was a boy of fifteen years. In another letter to her he admitted that he had only by persuasion kept some of his valuable land from being sold for taxes. Later he was compelled to borrow \$2,500 from a Maryland friend to satisfy urgent creditors before he went to New York to assume the office of president. All good Americans now and always will be indebted to Washington for the part he played in initiating the movements which finally led to the making of the Constitution, and for pointing the way out of the depression of that day. His part in the making and approval thereof was one of the greatest single influences in its favor, but his personal stake was a great one.

Every state had its own acute problem. In Massachusetts, Shays, in what is known as "Shays' Rebellion," a former officer in the Revolution, led an outraged yeomanry against the growing taxes of the time, and against courts, lawyers, and court-houses, and everything else which suggested the oppression which followed in the trail of their dire extremity. (In Iowa and other parts of the United States, incidents occurred in 1933 similar to those in Massachusetts 150 years before.) Only stern military force and the shedding of citizens' blood brought order out of chaos, events which changed the attitude of King and others of that state when a constitutional convention was first proposed.

Rhode Island was one of the hot-beds of radicalism, dissent, and uprising. The state government was in the control of radicals, and one critic spoke of the state as "Rogue's Island." The hunger marchers of that time captured the Rhode Island state government. The paper money craze which wrought havoc in a number of states there reached its zenith of frenzy. All but war broke out between the citizens of town and country. Local merchants in the

towns and villages refused to accept the specious money offered by their rural customers, and make-believe courts attempted to enforce its acceptance by unwilling merchants. Rhode Island had long ago become the home of those who had sought freedom in religion, and there was a sentiment of independence and a spirit of individualism which was stronger than in any other state. It had found much satisfaction in fixing exorbitant taxes upon goods shipped through its ports to other states. So great was the confusion and unrest that no delegate went from Rhode Island to the Continental Congress for some time before Washington became President, and as stated elsewhere in this volume, it had no delegates at the Constitutional Convention.

In western Pennsylvania a disgraceful riot arose when new settlers from Connecticut were driven from their new homes at the point of the bayonet and subjected to many cruelties at the hands of Pennsylvania troops who sought to evict them.

All along the New England seaboard also, the English Navigation Acts, which had required all goods to be shipped in English vessels manned by English sailors, had all but ruined the shipbuilding industry of New England and its commercial interests. Ship carpenters who as subjects of England a few years before had built ships which sailed all the seas, were now in the growing army of the unemployed, while unused American vessels slowly rotted away in their home ports.

The Spanish, the possessors of the greatest colonial empire of the time, were equally with England still strong adherents of the old school of economics, and steadfastly refused to permit any considerable trade between herself or her colonies and the thirteen states. It seemed as if American independence, rather than having put the new nation on an equal footing with other nations, had made it less such, for prior to the Revolution the colonies had at least been able to trade with England on some sort of terms. The international free trade which was to make the Yankee clipper ship supreme for over fifty years on the seven seas had to wait the break-down of the Spanish colonial empire following the Napoleonic Wars, and the substitution in the British Empire of Adam Smith's free trade for the closed empire trade which had existed theretofore, before the Amer-

ican flag was to become a common sight in every Oriental and Occidental port.

Down in Virginia English merchants sought in vain to collect millions due them from Virginia merchants, who refused to pay for goods bought prior to the Revolution. Patrick Henry, the Governor, opposed any plans for paying such debts until English troops were withdrawn from about Detroit and the other western sections of America, and until England had paid Virginia planters for slaves taken away by English soldiers during the Revolutionary War.

The paper money craze had also spread and was causing great concern to thoughtful leaders. In Maryland, Thomas Stone and Charles Carroll, of Carrollton, two of the strong men of that state who had signed the Declaration of Independence several years before, declined to go to Philadelphia, preferring to remain at home and fight there for sanity and order. As a result the Maryland delegation was not a strong one and exercised but little influence at Philadelphia.

Washington expressed the thought of many when he said at Philadelphia, "If we do not write a revolution in ink, we will write one in blood."

## V

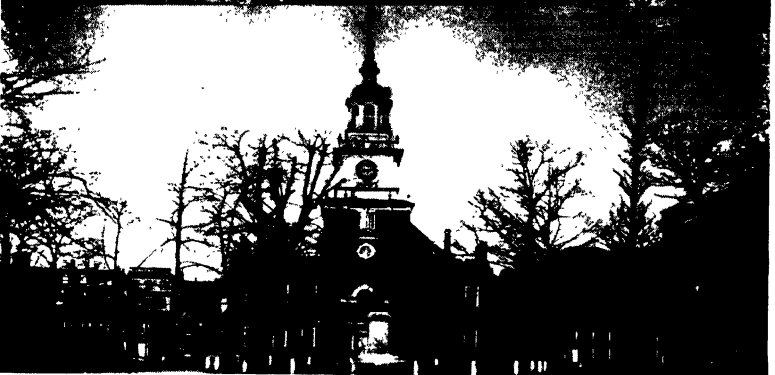
### ALEXANDRIA, ANNAPOLIS, AND THE CONSTITUTION

A STUDY of the events which led to the making of the Constitution must include the two significant meetings at Alexandria, Virginia, and Annapolis, Maryland. Neither was of great importance in or by itself, but together they are guideposts to the course of events which culminated in the making of our Constitution.

The Alexandria conference was one of delegates from the two states of Virginia and Maryland which met at Alexandria, Virginia, on March 21, 1785, in Gadsby's Tavern, a building still standing in 1936 and used as a museum and historical shrine. Alexandria also became famous as the first place in the United States to celebrate the ratification of the Constitution. It was on June 28, 1788, soon after ratification by New Hampshire and Virginia, that the messengers arranged for by Madison in Virginia and Hamilton in New York met at Gadsby's Tavern and exchanged the news that the ninth and tenth states had ratified the Constitution.

Two delegates to the Alexandria convention represented Virginia, Alexander Henderson, whose name is not so well known in Virginia history, and George Mason, whose fate it was to be present at this conference, to set in motion events which culminated in a Constitution, and then to fail to sign its final draft and actively to oppose its final ratification. There were other Virginia delegates, including James Madison and Edmund Randolph, who failed to attend the conference.

One of the three delegates from Maryland was Samuel Chase, a signer of the Declaration of Independence, and the eloquent and learned judge who later, after becoming a member of the Supreme Court of the United States, suffered the unhappy distinction of being the only member of that court ever to be impeached, al-



(Top) GADSBY'S TAVERN, ALEXANDRIA, VA.  
 Seat of the Alexandria Conference, March 21-28, 1785  
 (Middle) OLD CAPITOL, ANNAPOLIS, MARYLAND  
 Seat of the Annapolis Conference, September 11-14, 1786.



though the proceedings resulted in his acquittal. The charges of impeachment were laid by the brilliant and erratic John Randolph, of Roanoke, when Chase, an extreme Federalist, had openly expressed on the bench his disapproval of certain measures proposed by the administration of Thomas Jefferson.

Another Maryland delegate was Thomas Stone, also a signer of the Declaration of Independence, one of whose descendants was a member of the Maryland legislature in 1933. The third delegate from Maryland was Daniel of St. Thomas Jenifer, then an active leader in Maryland politics, destined later to sign the Constitution at Philadelphia.

The primary purpose of the Alexandria conference was to reach some peaceful agreement relative to the use of the Potomac River and Chesapeake and Pocomoke Bays. There had been much irritation between the two states regarding the use of these bodies of water. Under the grant to Lord Baltimore, Maryland owned the Potomac River to the Virginia bank. Alexandria and other places along the Virginia shore were growing into ports at that time, and it was necessary that some definite agreement be reached relative to the respective rights of these two states in these waterways. This historic meeting, of such far-reaching consequence, was thus primarily a meeting for the development of commerce and trade, although it was to be one hundred and two years, during the first administration of President Grover Cleveland, when the Interstate Commerce Commission first came into existence on February 17, 1887.

The conference was in session for one week, after which Washington, the master mind back of the conference, invited its members to be his guests at Mount Vernon. He had been much interested for many years in matters of commerce and navigation, and a year before had made an extensive journey to the western section of Virginia, which then included West Virginia, and had envisioned a far-reaching plan whereby a western trade route could be opened by establishing some sort of connection between the headwaters of the Potomac River, located in Maryland, and the headwaters of the Monongahela River in Pennsylvania, which together with the Allegheny River in that state form the Ohio River. He



also had suggested that some sort of direct connection be established between the headwaters of the James and the great Kanawha River which empties into the Ohio.

Washington's ambitious plans could not, of course, be carried out at the time. The agreement finally drafted at Alexandria between the two states provided for the removal of any duty on Maryland corn shipped into Virginia and on Virginia tobacco shipped into Maryland, as well as an agreement on matters of navigation, an irritant to both states, and an agreement on common currency. All of which were contrary to the Articles of Confederation, which required such to be approved by the Continental Congress, but reform was in the air and the Articles of Confederation were all but ignored by those in the lead for constitutional reform.

In addition, however, to thus doing what it could for the immediate problem, the Alexandria conference took another important step. It was plain that no fundamental approach was possible unless every state which would be affected was represented, and before adjourning it recommended a further convention to be attended by delegates from all the thirteen states. The actual invitations were sent out by the small but important state of Maryland, to meet at Annapolis. The problems to be considered again were those of interstate trade, and the conference was thus the first national trade conference.

When the resolution for this proposed new conference at Annapolis first came before the Virginia legislature it did not meet with a favorable reception. James Madison, who then had a far-reaching plan for an enlarged national government, for tactful reasons asked John Tyler, a conservative states rights leader and father of a future president, to sponsor his resolution on the floor of the Virginia Legislature. At that time it was defeated, but later, when Maryland had planned actively for the Annapolis conference, Virginia fell in line, approved the idea, and chose eight delegates. Three of them, James Madison, Edmund Randolph and St. George Tucker, accepted their election and went. George Mason, one of the remaining five, did not go. Tucker was the head of a long line of great Virginians which in 1936 still exercised a fine influence on the legal and intellectual life of their state. He was the stepfather of John Randolph, of Roanoke, and became the successor of George Wythe both as Chan-

cellor of Virginia and as law teacher at the College of William and Mary.

As it happened, Maryland elected no delegates to the trade conference which it had invited to meet in its own capitol. Political divisions in the Maryland legislature were partially responsible for this failure. It was also thought by some that the conference could accomplish nothing of tangible value and by others that it was an infringement on the rights and duties of the Continental Congress, which however at the time was at a low ebb.

The little state of Delaware sent three delegates—John Dickinson, Richard Bassett, and George Read, all of whom later attended the Convention at Philadelphia and affixed their names to the Constitution.

Alexander Hamilton, then only twenty-nine years of age, and Egbert Benson, a famous New York lawyer and judge, came as delegates from New York. Tenche Coxe, of Philadelphia, the lone delegate from Pennsylvania, was a rising young economist much interested in commercial matters, who served later as the assistant to Hamilton during his career as Secretary of the Treasury.

Abraham Clark, William C. Houston and James Schureman were the three delegates from New Jersey, thus making an even dozen to attend that historic convention. Clark, a signer of the Declaration of Independence, was elected later as a delegate to the Philadelphia Convention but did not accept, although he did serve later as a member of the Federal Congress. Houston, who had been a professor in Princeton, was also a delegate to the Constitutional Convention, but remained there for only a short time on account of ill health. Schureman served later both as a congressman and senator from New Jersey. The delegates from New Jersey went to Annapolis with authority to consider other questions of vital interest to that state, particularly some definite commercial reforms. The state had previously delayed ratification of the Articles of Confederation for the reason that they did not provide some definite rules for the regulation of commerce.

These five states were the only ones represented by delegates when the conference convened in the old capitol at Annapolis on September 11, 1786. Four states failed to elect any delegates, while those

chosen from the other four states failed to arrive at Annapolis before the meeting adjourned, among whom were Dr. Hugh Williamson, of North Carolina, and Elbridge Gerry, of Massachusetts, who later had an active part in the making of the Constitution. The chairman of the conference was John Dickinson, of Delaware, who had been a leader in the noted Stamp Act Congress which had met in New York twenty-one years before.

When delegates came from only five states it was apparent that no issues of national consequence could be successfully solved, and after three days of informal discussion the conference adjourned. First, however, it listened to an address by the brilliant young Hamilton calling for a second convention to meet on the second Monday in May of the following year at Philadelphia and setting forth the urgent need for national governmental reform. As a result events were set in motion which culminated in the meeting of the convention which wrote the Constitution of the United States.

The legislatures of the states one by one approved the idea of this second convention as proposed in the Hamilton resolutions, and selected delegates to go to Philadelphia. The Continental Congress, however, at first did not approve of the plans suggested at Annapolis. It was not until it was apparent that the states would ignore the position of Congress and provide for this second convention regardless of its action that that body also issued a call for a convention to meet at the exact time and place as was suggested at Annapolis. One of the leaders in the Continental Congress, Rufus King, of Massachusetts, at first violently opposed the proposed meeting, but the unfortunate condition of the country at that time and the alarming effect of Shays' rebellion in his own state produced a change of heart, and he himself finally made the motion on the floor of the Congress for calling the Philadelphia Convention.

The Resolution adopted at Annapolis was as follows:

"To the honorable the legislatures of Virginia, Delaware, Pennsylvania, New Jersey and New York, the commissioners from the said states, respectively, assembled at Annapolis, humbly beg leave to report:

"That pursuant to their general appointments, they met at Annapolis, in the state of Maryland, on the 11th of September instant; and

having proceeded to a communication of their powers, they found that the states of New York, Pennsylvania and Virginia had in substance, and nearly in the same terms, authorized their respective commissioners 'to meet such commissioners as were, or might be, appointed by the other states of the Union, at such time and place as should be agreed upon by the said commissioners, to take into consideration the trade and commerce of the United States; to consider how far a uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report to the several states such an act, relative to this great object, as when unanimously ratified by them, would enable the United States, in Congress assembled, effectually to provide for the same.'

"That the state of Delaware had given similar powers to their commissioners, with this difference only, that the act to be framed in virtue of these powers is required to be reported 'to the United States in Congress assembled, to be agreed to by them, and confirmed by the legislature of every state.'

"That the state of New Jersey had enlarged the object of their appointment, empowering their commissioners 'to consider how far a uniform system in their commercial regulations, and other important matters, might be necessary to the common interest and permanent harmony of the several states; and to report such an act on the subject as, when ratified by them, would enable the United States, in Congress assembled, effectually to provide for the exigencies of the Union.'

"That appointments of commissioners have also been made by the states of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom, however, have attended; and that no information has been received by your commissioners of any appointment having been made by the states of Maryland, Connecticut, South Carolina, or Georgia.

"That, the express terms of the powers to your commissioners supposing a deputation from all the states, and having for object the trade and commerce of the United States, your commissioners did not conceive it advisable to proceed on the business of their mission under the circumstances of so partial and defective a representation.

"Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your commissioners cannot forbear to indulge an expression of their earnest and unani-

mous wish, that speedy measures may be taken to effect a general meeting of the states in a future convention, for the same and such other purposes as the situation of public affairs may be found to require.

"If, in expressing this wish, or in intimating any other sentiment, your commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive an indulgent construction.

"In this persuasion, your commissioners submit an opinion, that the idea of extending the powers of their deputies to other objects than those of commerce, which has been adopted by the state of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future convention. They are the more naturally led to this conclusion, as in the courses of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the federal system.

"That there are important defects in the system of the federal government is acknowledged by the acts of all those states which have concurred in the present meeting. That the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the states. In the choice of the mode, your commissioners are of opinion, that a convention of deputies from the different states, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized.

"Your commissioners decline an enumeration of those national circumstances on which their opinion, respecting the propriety of a future convention with more enlarged powers, is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which

can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious as in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

“Under this impression, your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the states by whom they have been respectively delegated would themselves concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every state, will effectually provide for the same.

“Though your commissioners could not with propriety address these observations and sentiments to any but the states they have the honor to represent, they have nevertheless concluded from motives of respect to transmit copies of this report to the United States in Congress assembled and to the executives of the other states.”



*PART TWO*

*THE MAKING OF THE CONSTITUTION*



*"It ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, its judicious mixture of definiteness in principle with elasticity in details. . . . It opposes obstacles to rash and hasty change. It forces the people to think seriously before they alter it or pardon a transgression of it. It makes legislatures and statesmen slow to overpass their legal powers, slow even to propose measures which the Constitution seems to disapprove. It forms the mind and temper of the people. It strengthens their conservative instincts, their sense of the value of stability and permanence in political arrangements. It makes them feel that to comprehend their supreme instrument of government is a personal duty, incumbent on each one of them."*—JAMES BRYCE, *The American Commonwealth* (Vol. I, p. 28).

## I

### THE CONVENTION OPENS AND ORGANIZES

**G**LADSTONE, the great English statesman, who was an ardent admirer of the American Constitution, pronounced it the greatest instrument struck off at one time by the mind and purpose of man. Gladstone evidently did not take into consideration its long evolutionary history, the great historic sources from which it was drawn, nor the protracted labors of many minds which were necessary to achieve the finished product.

Friday, May 25, 1787, was a cold rainy day in Philadelphia. The clouds which hung low in the physical world were not calculated to dispel the clouds of anxiety in the minds of the scattered delegates who had gathered in the city for the opening of the Constitutional Convention. Many had been there for as long as two weeks, and yet only a bare quorum had arrived.

Despite the inclemency of the weather, however, twenty-nine delegates from the nine states of Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia met in Independence Hall on that day. The call for the convention by the Continental Congress issued February 21st previous had been for May 14th, but the guests had been late in arriving. Even so, the seven delegates from Virginia and the four from South Carolina constituted the only complete state delegations. Rufus King, from Massachusetts, and William Few, from Georgia, were the lone representatives of their states on that opening day and for some days thereafter, as the remaining delegates straggled in, some on horseback, some by stage-coach, some by sailing vessel.

The great Washington had arrived eleven days previous amid the pealing of Philadelphia's church bells and the cheers of an assembled crowd, and chafed with impatience at the inactivity in the interim, for his private affairs were arranged as precisely as clockwork. He had been reluctant to leave his quiet and peace-

ful Mount Vernon to come to Philadelphia. When Governor Randolph, of Virginia, first urged him to go as a delegate he not only gave his health as an excuse for declining such an appointment, but also insisted that, since he had declined to attend the meeting of the Society of the Cincinnati, the "American Legion" of that day, which was to meet in Philadelphia at the same time as the Constitutional Convention, he could not in good grace accept the invitation to the latter.

Many faces of national renown were absent among the fifty-five delegates who attended the session from time to time. John Adams, of Massachusetts, and Thomas Jefferson, of Virginia, who had signed the Declaration of Independence in that very room eleven years before, were both occupying diplomatic posts in Europe, the former in England and the latter in France. Each was destined later to occupy the post of president created by the Convention. Richard Henry Lee, of Virginia, a former president of the Continental Congress, who before the writing of the Declaration of Independence had declared that the colonies were and of right should be free and independent states, had refused to accept an appointment as delegate. Patrick Henry, of Virginia, first governor of his state, had also refused to serve. Though Henry's silver tongue had aroused the colonies to action twenty-two years before, and though he had declared nine years later in the first Continental Congress that he was not a Virginian but an American, he held aloof from this convention, calling it a "golden trap" for an unwary public. Samuel Adams, one of the Massachusetts firebrands of the Revolution, who had been more than a voice in other days, was also absent.

All the eight members of the Pennsylvania delegation lived in Philadelphia, and several were also members of the Pennsylvania legislature, which had been in session in Philadelphia for several weeks before the Convention met, on the floor above the Convention. The Virginia delegation was the first to arrive in the Pennsylvania capital. These two states, two of the three large states of the Union, had much in common, and their delegations met in numerous afternoon conferences during those two weeks. Just what was said and done during that time will probably never be fully known, for no records were kept, but it is plain from sub-

sequent events that the personal relations between them were very cordial, that Virginia's plan for a constitution was discussed in detail, and that a plan for joint action on the floor of the Convention was probably agreed upon among them. The evidences of this agreement were not long in showing themselves.

After the delegates had ceremoniously filed into the fine old hall and seated themselves, General George Washington, on nomination of Robert Morris seconded by John Rutledge, was unanimously elected President of the Convention, and was escorted to the chair by the same two gentlemen. His address of acceptance was short and dignified, and he begged the indulgence of those present if his lack of parliamentary experience should lead him to unintentional errors in his conduct of the proceedings to come.

Two names were next suggested for Secretary, one of them being Temple Franklin, the illegitimate son of Benjamin Franklin, who was nominated by James Wilson, of Pennsylvania. The choice finally rested on Alexander Hamilton's nominee, Major William Jackson, then Secretary of the Society of the Cincinnati, and a man of some diplomatic experience under Henry Laurens in France during the war, as well as experience as a soldier in the field. Jackson had married a member of the wealthy Willing family in Philadelphia. He was twenty-nine years of age, a native of England, and studying law at the time. The choice was not a happy one, for the records Jackson left of the proceedings are very meager, and it was well for future history that Madison, of Virginia, voluntarily assumed the twofold task of recording the work of the Convention in addition to being one of its principal actors.

The credentials of the delegates were next read. The Convention was greatly interested in those of the Delaware delegates, who were specifically prohibited from changing the provisions of the Articles of Confederation which gave an equality of votes among all the states, regardless of their size. Events soon arose in the Convention to justify the interest in this, Delaware's second declaration of independence.

On the motion of Charles Pinckney, of South Carolina, a committee on rules was appointed, consisting of George Wythe, of Virginia, Alexander Hamilton, of New York, and Charles Pinckney, of South Carolina. The Convention then adjourned.

The following Monday, May 28th, nine additional members were present, including the four remaining members of the Pennsylvania delegation of eight members. Among them was the venerable Benjamin Franklin, already, like Washington, one of the immortals, whose first appearance aroused much interest among many of the younger men, to whom he was virtually a legend. His age and poor health had prevented his appearance on the first day.

Chancellor Wythe, chairman of the Rules Committee, opened the proceedings with the reading of the proposed rules of the Convention, which as adopted read as follows:

“A House to do business shall consist of the deputies of not less than seven states and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

“Immediately after the president shall have taken the chair, and the members their seats, the minutes of the preceding day shall be read by the secretary.

“Every member, rising to speak, shall address the president; and, whilst he shall be speaking, none shall pass between them or hold discourse with another, or read a book, a pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the president shall name him who shall be first heard.

“A member shall not speak oftener than twice, without special leave, upon the same question, and not the second time, before every other who had been silent shall have been heard, if he choose to speak upon the subject.

“A motion, made and seconded, shall be repeated, and, if written, as it shall be if any member shall so require, read aloud by the secretary, before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

“Orders of the day shall be read next after the minutes; and either discussed or postponed, before any other business shall be introduced.

“When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

“A question which is complicated shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

"The determination of the question, although fully debated, shall be postponed, if the deputies of any state desire it, until the next day.

"A writing, which contains any matter brought on to be considered, shall be read once, throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

"Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the committee. When two or more members have an equal number of votes, the member standing first on the list, in the order of taking down the ballots, shall be preferred.

"A member may be called to order by any other member, as well as by the president and may be allowed to explain his conduct, or expressions, supposed to be reprehensible. And all questions of order shall be decided by the president, without appeal or debate.

"Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

"When the House shall adjourn, every member shall stand in his place until the president passes him."

In addition to the above rules or procedure, the Convention voted at once that its meetings and deliberations should remain secret. It met thereafter behind closed doors with guards standing before them to exclude intruders, no reporters were admitted to chronicle its proceedings, and no flashlights boomed to record the faces of the great and near-great as they gathered upon their history-making mission.

Gouverneur Morris, of the Pennsylvania delegation, read a communication from Rhode Island, which had sent no delegates to the Convention, signed by certain of its prominent citizens, explaining that while the officially constituted government of the state did not choose to endorse the objects of the Convention by sending delegates to it, nevertheless the writers of the letter hoped well for its labors. The full text of the letter is set forth in the chapter on Rhode Island (Part III, Chapter V).

The Convention, having chosen its officers and approved the rules for its deliberations, was now ready for business, and Gouverneur Morris, Pennsylvania's brilliant though crippled young banker-states-

man, immediately rose to precipitate discussion of a fundamental issue. He moved that, as a preliminary matter, it be determined at once that in the new government to be worked out by the Convention the states vote, not with an equal vote regardless of their size, but on the basis of their population. This was directly contrary to the express instructions of the Delaware delegation as contained in their credentials, and the motion was diplomatically not allowed to be brought to a vote. But already the main lines of the thinking of the delegates had thus been expressed.

## II

### THE PERIOD OF PLANS AND PURPOSES

ON the morning of Tuesday, May 29, the work of the Convention really began, and the Virginia delegates immediately set the tone for the first weeks of discussion. On that day Edmund Randolph, the tall, handsome, cultured and aristocratic governor of Virginia, rose on the Convention floor and read the fifteen resolutions setting forth a plan for a Constitution known in history as the "Virginia Plan." In explanation of his proposals he gave the following clear analysis of conditions during the six and one-half years under the Articles of Confederation:

"The Confederation was made in the infancy of the science of constitutions, when the inefficiency of requisitions was unknown; when no commercial discord had arisen among the states; when no rebellion like that in Massachusetts had broken out; when foreign debts were not due; when the havoc of paper money had not been foreseen; when treaties had not been violated, and when nothing better could have been conceived by states jealous of their sovereignty. But it offered no security against foreign invasion, for Congress could neither prevent nor conduct a war, nor punish infractions of treaties or of the law of nations, nor control particular states from provoking war. The federal government had no constitutional power to check a quarrel between separate states, nor to suppress a rebellion in any one of them; nor to establish a productive impost; nor to counteract the commercial regulations of other nations; nor to defend itself against the encroachments of the states. From the manner in which it had been ratified in many of the states, it could be claimed to be paramount to the state constitutions; so that there is a prospect of anarchy from the inherent laxity of the government. As for the remedy, the government to be established must have for its basis the republican principle."

The distinctive feature of the "Virginia Plan" which Randolph



then set forth in fifteen carefully worded resolutions was the provision which called for a legislature of two houses rather than one, as had been the case under the old Articles of Confederation, but with the members of the lower house elected directly by the people on the basis of population in each state. In other words, the source of power in the legislature was now to rest directly in the people through their own chosen representatives, and no longer in the states as political bodies, and in direct proportion to the size of each state. The members of the Senate were to be elected by the House of Representatives from names suggested to the Congress by the several legislatures.

The Virginia Plan also called for a President to be chosen by the House of Representatives, who was to serve for seven years and be ineligible for re-election. This part of the plan was once actually adopted, only to be changed to the regret of many before the Convention adjourned. It was the first time in the history of any nation in which it was seriously proposed that a ruler should receive his power even remotely from the people he served.

In addition, the much-needed regulation of commerce by Congress was provided for, as well as other vital matters which had concerned those interested in the changing and altering of the original Articles of Confederation.

The plan thus proposed was not entirely the work of Randolph. Madison had been a leader in its formulation, and it had also been finally agreed upon by the seven delegates from Virginia and the eight from Pennsylvania in their informal conferences before the Convention began.

Randolph was followed by a young and attractive South Carolinian, Charles Pinckney, less than thirty years of age, who had already won renown as a member of the Continental Congress. Pinckney now also presented a plan of his own the exact terms of which are not known, but which in its main outline duplicated in many ways the plan presented by Governor Randolph.

There were other plans among the members present which might have been submitted at this time, but the dominant portion of the Convention apparently decided that the two plans already submitted were enough for the time, and the Convention resolved itself into a

committee of the whole for their discussion, with Nathaniel Gorham, a rich Boston merchant and former President of the Continental Congress, in the chair. Gorham, one of the few leaders present who was not a lawyer, was to play a large rôle in making the Constitution. He was at times skeptical of his own handiwork, and was said to have been in sympathy with the underground plan of some pro-English-Americans to invite a son of George III to serve as king of his father's former colonies.

The plan apparently discussed from the start was the Virginia Plan. Pinckney's seems to have been ignored, and was later lost by the committee on detail to which both plans were submitted. In 1819 a lively dispute was to arise over the precise terms of Pinckney's plan, when the journal of the Convention's proceedings was first published and Pinckney sent in what he claimed was his copy of the original copy of his plan. Ex-President Madison, then living in retirement, denied the authenticity of Pinckney's plan as then presented; he pointed out that the paper upon which it was written bore a water-mark of 1797, ten years after the Constitution was written, and that the draft submitted by Pinckney contained provisions contrary to his expressed views on the Convention floor. It is only fair to say here, however, that more than one-third of the provisions of our Constitution as finally adopted embraced the identical ideas advanced by the bold and brilliant young southerner, who is not named by some historians in describing the work of the Convention.

The decision to proceed at once to a consideration of the Virginia Plan involved a further radical decision on the part of the delegates, and it is notable that it came thus at the very outset of their deliberations. The instructions of almost all the delegates were very plain in stating that they were only authorized to consider and propose amendments to the Articles of Confederation; only the credentials of the New Jersey delegation authorized them to propose an entirely new form of government. Also, the calls for the Philadelphia Convention issued by both the Annapolis conference and the Continental Congress had specified only that amendments to the Articles be considered. The decision to proceed at once to the consideration of plans for an entirely new form of government, which

the Virginia Plan clearly was, demonstrated plainly the low estimate to which the then-existing government of the Confederation and the Congress sitting in New York City had fallen. The New Jersey plan, which was not proposed for over two weeks more, on June 15th, which was sponsored particularly by the small states, was a plan which only proposed to amend the Articles, though it was singular that it should have been proposed by the one state whose delegates were authorized to do what was proposed by the Virginia Plan and which was actually done by the Convention.

Open discussion on the Convention floor now followed. James Wilson, the great lawyer of the Pennsylvania delegation, suggested that United States Senators be elected from districts composed of several states. Another subject discussed early, but rejected, was a proposal by Franklin that the executive of the nation should serve without compensation. The suggestion was no doubt inspired partly by the memory of Washington's service as Military Commander without pay during the Revolution, partly also by the English idea of public service without pay by those of wealth who could afford such a sacrifice on behalf of the public, an idea which appealed particularly to the delegates from South Carolina. Randolph suggested that a committee of three serve in the executive office to avoid any suggestion of royal domination, such executives to be chosen from the three different divisions into which the several states should be divided, but this plan also found few followers. Roger Sherman thought the executive should have a council to assist him after the order of the Privy Council. From such an idea no doubt grew the President's cabinet, which was not specifically provided for in the Constitution.

The question of where appointing power should rest, whether in the hands of the executive or in the hands of the Senate, was also discussed immediately. The ultimate outcome of this discussion was the far-reaching provision of the Constitution providing for a number of acts to be performed by the President with the aid and consent of the Senate. Among such provisions were those calling for the appointment "with the advice and consent of the Senate" of the members of the Federal Supreme and Inferior Courts, and the nation's foreign representatives.

One of the radical features of the Virginia Plan which immediately caused much debate was that which provided for a veto by Congress of any obnoxious state law. Madison, who was responsible for this proposal, desired particularly that Congress be able to kill any state legislation which would make possible the evasion of just debts. The outgrowth of that discussion resulted in an unwritten agreement for the Supreme Court to pass on the constitutionality of state acts as well as of the acts of Congress. Though the powers of the Supreme Court were never specifically set forth in the Constitution, it was openly stated then that this would be one of the duties of the Court. However, the failure to make express provision on this point led to much controversy, which Marshall as Chief Justice only partly laid to rest in his boldly-reasoned opinion in *Marbury vs. Madison* a few years later.

The best minds of the Convention next took part in the debate over the manner of choosing the members of the lower house of Congress. James Wilson, a leader in the plan for a strongly consolidated form of government, was broadly democratic in his view-point on this issue. He suggested that the popular election of the President was not unfeasible, since all power should flow immediately from the people and be an exact transcript of their minds. Mason, of Virginia, also urged that at least one branch of Congress be chosen by the people themselves. In the discussion, George Read, from the little state of Delaware, predicted that state governments would sooner or later come to an end and be entirely overshadowed by the national government about to be established, and the trend of events in recent years has undoubtedly sustained his view-point.

The first critical period of the Convention arose when the manner of electing United States Senators and the number to be chosen came up for detailed discussion. Under the rules governing the old Continental Congress its membership had not only been made up of delegates from the states rather than from the people, having been elected by the state legislatures and not by the people, but each and all of the states had had an equal vote on the floor of the Congress. Though each state was allowed not less than two nor more than seven delegates, when a vote was taken it was the single vote of the state

represented by its delegation and not the vote of the individual representatives present. The small states, such as Delaware, Maryland, New Jersey and Connecticut, were anxious to continue to exercise the power which had been theirs in the old Continental Congress, and the delegates from Delaware had come to the Convention with definite instructions that this must continue to be the privilege of the small states. Paterson, of New Jersey, as the leader of the group, defied that part of the Virginia Plan which deprived them of equal representation with the great states of Massachusetts, Pennsylvania, and Virginia. He asked what chance New Jersey would have of justice under the proposed plan against the great state of Virginia with such unequal representation?

Wilson, as leader of a large-state delegation, on the other hand, protested against the claim for equal representation on the part of the small states. He frankly said it was vain to talk of a national government along such lines and that he would never agree that such a government be established. Representation based upon numbers was to him a vital principle which could not be set aside.

It was Roger Sherman, the wise old Puritan philosopher of the Connecticut delegation, who first suggested the election of senators from the several states in proportion to the number of inhabitants in the states, to be chosen by the legislatures of the several states instead of by the people, as the members of the House of Representatives were to be chosen, and further, that each state should have one vote in the Senate. That was the first step toward one of the great compromises of the Convention.

Franklin's infirmities of age would not allow him to stand on his feet at this time, but he now had Wilson read his written views on the matter of representation, in which he frankly declared that there was no danger of undue influence on the part of the greater states against the lesser ones. He called attention to the position of Scotland in the British Parliament, where its rights were not disturbed.

John Dickinson, of Delaware, then formally offered an amendment which had previously been suggested by John Rutledge from the wealthy state of South Carolina, providing for representation in Con-

gress based on the amount of taxes paid, which precipitated one of the bitter debates of the Convention.

Wilson then made a compromise proposal for representation in the House of Representatives based on the number of free inhabitants and three-fifths of all others. The three-fifths was to be made up of the slave element of the South, where five slaves were to count as three free men in estimating the number of inhabitants. This was the basis which had been agreed upon in the Continental Congress four years before when an unsuccessful effort had been made to enact tax legislation. Gerry, who came from Massachusetts, a strong anti-slavery state then as later when the slavery issue became more acute, arose in revolt against the idea of counting blacks for any purpose. He scornfully referred to them as property only in the South, and asked why slaves held as property should any more be counted than horses or oxen should be counted in the North. Wilson's motion, however, for the basis of representation, was finally agreed upon. Read, of Delaware, spoke scornfully of the passing of state government should such a rule prevail.

Plans for the new Congress calling for one, two, and three-year congressional terms were offered. The idea of electing congressmen every two years was originally the idea of John Rutledge, of South Carolina. Sherman, of Massachusetts, the state of annual elections, urged that they be elected every year. That rule not only then prevailed in Massachusetts state elections, but continued to do so until a few years ago.

The question of the pay of congressmen, which has been the source of much debate through all the years, also was raised at this point. After much discussion it was agreed that such officers should be paid by the Federal Government rather than by the states from whence they came, as had been the rule under the old Articles of Confederation.

The formal debate in committee of the whole on the Virginia Plan closed on June 13th, but its provisions continued in practice to be the basis of discussion for some days thereafter.

The debate on the method of electing the members of Congress, the establishment of the judiciary, and other features of the Consti-

tution continued through June 14th. Both Pinckney and Madison advocated the appointment of the judiciary by Congress, which motion prevailed at that time. It was also at that period that Gerry, of Massachusetts, proposed the far-reaching plan requiring that all bills involving taxation arise in the House of Representatives.

On June 15th, under the leadership of Paterson, of New Jersey, a group from the states of New Jersey, Connecticut, Delaware, and New York, with the aid of Luther Martin, of Maryland, presented the plan to the Convention known in history as the "New Jersey Plan." It called for merely correcting and amending the original Articles of Confederation, leaving the Continental Congress substantially as it was, except to give it substantial taxing power, and power to regulate commerce between the states. This was strictly in keeping with the primary purpose of the several steps which had led to the Convention, beginning at Alexandria and Annapolis.

The issue now was clearly drawn: the Convention had before it an entirely new plan calling for a consolidated national government as outlined in the Virginia Plan, and also the mere amending of what was then the existing form of government, as outlined in the New Jersey Plan. The New Jersey Plan was referred to the committee of the whole, to which had also been referred the plans introduced by Governor Randolph and Charles Pinckney several days before, and discussion of it began.

Lansing, of New York, a Clintonite in that state and a strict "states' rights" delegate, who belonged to the group sponsoring the New Jersey Plan, first spoke at length, contrasting the two major plans which had been placed before the Convention, the one deriving its authority directly from the people and the other from the states. James Wilson, who favored a strong national government, replied to Lansing and gave a clear-cut analysis of the difference between the two plans: the Virginia Plan calling for two branches in the national legislature, the New Jersey Plan for one; the Virginia Plan providing for legislative power derived from the people, the New Jersey Plan for power derived from the states; the Virginia Plan calling for legislation to be enacted by a majority vote, the New Jersey Plan for the affirmative vote of more

than a majority in favor of most measures, which would enable the minority to control; the Virginia Plan permitting legislation on all national matters, the New Jersey Plan on a much more limited number of matters; the Virginia Plan giving authority to the national legislature to veto all state laws; the Virginia Plan power to compel obedience by the executive through impeachment, the New Jersey Plan calling for the removal of the executive only on application of a majority of the states; the Virginia Plan calling for the establishment of inferior national judiciary tribunals, the New Jersey Plan making no corresponding provision.

The majority of the delegates were apparently inclined to Wilson's rather than Lansing's views, and when the vote was taken on the several plans for a Constitution, the Virginia Plan, which had been enlarged to include nineteen resolutions instead of fifteen as originally offered by Governor Randolph, was adopted. The groundwork was thus laid for a new government, and a peaceful revolution had begun. For the first time in history a nation by using the pen rather than the sword was about to discard one form of government and establish another in its stead, and the brilliant James Wilson in a spirit of prophecy enthusiastically declared that in future ages their work would bear great fruit. The prophecy has been fulfilled, for unnumbered nations throughout the world have adopted the constitutional principle since that date, and have modeled their constitutions in whole or in part after that of the United States.

On June 18th Alexander Hamilton read to the Convention his outline of a plan for a constitution. He advocated the election of a President to serve during good behavior and a Senate with a similarly indefinite tenure of office; the senators to be chosen by electors selected by the people. He also suggested that the President appoint the governors of the states. He had but little faith in a democracy and did not hesitate to say so. His plan was clearly monarchistic, and no one knew better than Hamilton himself that his plan would never be adopted, despite the applause given to him for the brilliant address he made in presenting it. Dr. Johnson, of Connecticut, said later that Hamilton had been praised by all and supported by none.

An extended discussion again followed, particularly over the length of the terms of members of the House of Representatives. The origi-



nal plan called for a three-year term. After much debate the motion of Randolph for a two-year term prevailed for the time, although Sherman, of Connecticut, wanted congressmen to be chosen annually as had been the case in the Continental Congress.

There was also some discussion of Franklin's proposal for a single legislative chamber, but this proposal was soon dropped, since with two chambers a number of important compromises were possible which would have otherwise failed of solution.<sup>1</sup>

During this period of the Convention two important events occurred. One was the long tirade of Luther Martin, the inebriated Attorney General of Maryland, who made himself unpopular by his attack on the proposed plans for an entirely new form of government. After emptying his mind of all his accumulated expletives he left the Convention hall, went home, and unsuccessfully attempted to discredit the work of the Convention in a long incoherent address to the Maryland legislature.

The other notable event was the oft-misquoted address and motion of Franklin that a chaplain be engaged to lead the Convention in prayer. The exact words used by Franklin in explanation of his motion were:

"Mr. President:

"The small progress we have made after four or five weeks' close attendance and continuous reasoning with each other over different sentiments on almost every question, several of them at least producing as many no's as ayes is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom since we have been running about in search for it. We have gone back to ancient history for models of government and examined the different forms of those republics which, having been originally formed with the seed of their own dissolution, now no longer exist; and we have viewed modern states all around Europe but find none of their constitutions suitable to our circumstances.

"In this situation of the assembly, groping as it were in the dark

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<sup>1</sup> In two of the states, Pennsylvania and Georgia, the legislatures of that day consisted of only one body. In 1934 the state of Nebraska voted an amendment to its constitution which provided for a single legislative chamber.

to find political truth and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Light to illuminate our understanding?

"In the beginning of the contest with Britain when we were sensible of dangers, we had daily prayers in this room for the divine protection. Our prayers, sirs, were heard and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending providence in our favor. To that Kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine we no longer need His assistance?

"I have lived, sir, a long time, and the longer I live the more convincing proofs I see of this truth: 'That God governs in the affairs of men,' and if a sparrow cannot fall to the ground without His notice, is it probable that an empire can rise without His aid? We have been assured, sirs, in the sacred writings, that except the Lord build the house, they labor in vain that build it. I firmly believe this. And I also believe that without His concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little, local, patriotic interests, our projects will be confounded and we, ourselves, shall become a reproach and a byword to future ages; and what is worse, mankind may hereafter from this unfortunate instance despair of establishing government by human wisdom and lead it to chance, war and contest."

The motion was seconded by Sherman but did not come to a vote. Randolph moved that a minister be invited to preach a sermon a few days later on the Fourth of July, and then serve as chaplain afterwards. That motion failed also. There was a general agreement that the rule of secrecy might be violated should an outsider be admitted into the hall daily, but Dr. Williamson probably told the real reason why no chaplain was engaged: at this time there probably would have been no money with which to pay him for his services. Hamilton did not cynically suggest that no foreign help was needed, as he has often been quoted as having said. With all his human weaknesses, he was a reverent man and such a remark was foreign to his nature.

Next followed a heated debate over the number and manner of electing the members of the United States Senate. The situation became so acute that Franklin's conciliatory suggestion was finally adopted and a special committee appointed to make recommendations as to the number of senators and representatives to be chosen by the states. On July 1st, a Monday, Gerry, of Massachusetts, who served as chairman; Ellsworth, of Connecticut, who was ill and was succeeded by Sherman; Yates, of New York; Paterson, of New Jersey; Franklin, of Pennsylvania; Bedford, of Delaware; Martin, of Maryland; Mason, of Virginia; Davie, of North Carolina; Rutledge, of South Carolina; and Baldwin, of Georgia, were chosen thereto.

The Convention then adjourned to meet again on Friday, July 5th, when another history-making epoch began.

### III

#### GREAT COMPROMISES

**J**ULY 5 to 16, 1787, may properly be described as the dark days of the Constitutional Convention. During that time great issues were resolved and important compromises, vital to the future of America and destined to have a far-reaching effect on American history, were made. Our very plan of government hung in the balance.

A few days before, when the vote had been taken on the question of giving to each state membership in the Senate based on the population of the states, the vote had been tied, five states having voted to give the states equal representation, and five states voting to the contrary. The large states of Massachusetts, Pennsylvania, and Virginia had stood firmly for both a House and Senate elected by the people, the membership of which was to be based entirely on population, and the two southern states of North and South Carolina, under the influence of Virginia, had voted with the three large states. The five small states of Connecticut, New York, New Jersey, Delaware, and Maryland had stood equally adamant in opposition to such a plan.

It was the absence of the vote of Georgia which had saved the day and opened the way for future discussion. The vote of that state was divided, and hence lost, by the vote of a young Yale graduate, Abraham Baldwin, a native of Connecticut, who no doubt was influenced in his position by the delegation from the state of his youthful associations. Though the Convention listened for Georgia's decision with great expectancy, little did those there realize how much the very future of the nation rested in the hands of the young Georgian.

The issue had been acute on Monday, July 2, 1787, and the venerable and reverend Franklin, the great conciliator, had proposed that a compromise committee be appointed. The committee made its

report on Thursday, July 5th, the Convention having adjourned from Monday until that time. The committee recommended that the new government be in effect partly national and partly federal, the House of Representatives to be composed of members elected by the people directly, thereby becoming a national body, while the members of the Senate would be elected by the states, thus making that body federal in nature, as had been the Continental Congress. The reading of this proposed compromise was the opening gun in the titanic struggle which followed for eleven days, when the final and far-reaching compromise on the question of congressional representation was accomplished.

The committee's report apparently did not have the entire approval of all its members. One of them, Robert Yates, of New York, after signing the report, left the Convention hall in company with John Lansing, another New York delegate, and returned to New York, and neither appeared again upon the Convention floor. Hamilton, the third New York delegate, who stood for a form of government directly contrary to the views of both of these gentlemen, had already returned home, and as a result New York did not again have a vote on the Convention floor. Although Hamilton returned later and took an active part in the closing proceedings, two delegates from any state were the minimum required for a vote. For many days thereafter only ten of the thirteen states were represented by delegates. The New Hampshire delegation did not arrive until July 23rd, and Rhode Island was never represented.

After many addresses, some of which were tinged with threats and even with bitterness, the final vote on the question of equal representation for the states in the Senate regardless of their size was taken on July 16th. Even then the margin was too close for either side to be comfortable. The delegation from Delaware had come to Philadelphia with definite instructions not to approve anything which would deprive that state of equal rights with all other states. The vote was five to four in favor of equal representation. The five states of Connecticut, New Jersey, Delaware, Maryland, and North Carolina, the first four being the smaller states of the Union, all of which had stood firmly for equal representation from the beginning, again voted for equal representation. Pennsylvania and Virginia voted

against equal representation in the Senate. South Carolina and Georgia were influenced by Virginia and cast their votes in the same way. The vote thus stood five to four in favor of equal representation, with Massachusetts still to be heard from.

Again we are indebted to a few individuals for a decisive determination in the history of a nation. By a strange turn of fate the vote of Massachusetts, one of the three large states in the Union, which state had previously stood firm with Pennsylvania and Virginia, was divided and hence lost when the final vote was taken. Two of its delegates, Elbridge Gerry and Caleb Strong, voted with the small states, while Rufus King and Nathaniel Gorham remained loyal to Virginia and Pennsylvania and voted against equal representation. The votes of Gerry and Strong thus made possible a far-reaching and indispensable compromise.

But more surprising even than this unexpected division in the vote of Massachusetts was the vote of North Carolina, which had been cast on the previous ballot with the votes of Virginia and the other southern states. As a result of the influence of William R. Davie, a Princeton man and leader in the North Carolina delegation, the vote of that state was cast on the side of the smaller states of the North. It will always be an interesting query why Davie, born in England but raised in boyhood in the South, broke away from the influence of Virginia and reversed North Carolina's vote at this decisive juncture.

Under the plan thus adopted, which was the first great compromise in the making of the Constitution, there was to be a Congressman for each 40,000 of population, and Congress was given the power to change the basis of population from time to time, as has been done through the years. The only speech made on the Convention floor by Washington was the one he made at the end of the session when he asked that a change be made in this provision so as to allow a Congressman for each 30,000 people, rather than for each 40,000 as first agreed upon. It is difficult for an American citizen of today to imagine a House of Representatives made up of one member for each 30,000 of our people. With one hundred and twenty-eight million souls, we should today have a congress of about four thousand members, which to one familiar with the degree of dignity maintained at

times by that august body would suggest pandemonia and bedlam supreme.

But all was not well when the delegates came together on July 17th, after the historic vote of July 16th had ended the long drawn-out controversy over how the states would be represented in the new Congress. The delegates from Pennsylvania, Virginia, and Massachusetts were unhappy over the five-to-four decision of the previous day, which gave Delaware, the smallest state represented in the Convention, equal representation in the Senate with that of Virginia, the largest state.

Governor Randolph suggested that the Convention recess, so that the delegates from the larger states might consult on their future course. Paterson, of New Jersey, who, like Governor Randolph, had presented to the Convention a plan for a constitution, suggested that the Convention adjourn and that the members be released from their pledge of secrecy concerning its deliberations, that they might consult with their constituents over their future course. He repeated the demand of the small states for equal representation and intimated that a breaking up of the Convention would be entirely agreeable to them.

Rutledge, of South Carolina, and Gerry, of Massachusetts, the one from the South and the other from the North, on the other hand, made conciliatory addresses. Gerry, as chairman of the compromise committee, had been influential in having his committee recommend that all tax bills originate in the House of Representatives, whose members were elected directly by the people, a provision which had aided in the compromise effected, for the House would be controlled by the larger states. After a brief conference of the delegates from the larger states, harmony was restored and the Convention continued.

The next compromise, though less important than the first, also involved the question of representation. There was at that time a great jealousy on the part of the East over the future prospects of the then undeveloped West, due first to the fear that that section might some day overshadow and out-vote the East, and second, that the development of the West would drain away the best population of the East. King and Gerry, of Massachusetts, proposed on the floor of the Convention that the total number of Congressmen who

would come later from the new states should never exceed the total number from the original thirteen states. Such an idea seems absurd today, but the suggestion was supported by the Massachusetts, Connecticut, and Delaware delegates on the Convention floor. The vote of New Jersey, together with those of Virginia, North Carolina, South Carolina, and Georgia, defeated such a narrow sectional plan.

But probably the most difficult and complicated compromises were those which grew out of the issues between the pro-slavery and anti-slavery parties in the Convention.

It is very difficult for the student of today, educated to hate with all the horror of his soul the institution of human slavery, to understand why slavery was not abolished at once in our national Constitution, as it was outlawed in the Northwest Ordinance of 1787, adopted by the Continental Congress at the time this compromise was being debated on the floor of the Constitutional Convention.

The principle of slavery was then unpopular in most of the states. Massachusetts in the east had prohibited human slavery in its state constitution seven years before, and was pronouncedly opposed to any recognition of it in the Federal Constitution. In the southern states of Maryland and Virginia strong anti-slavery sentiment prevailed. Washington, Jefferson, and other great Virginians, though slave-owners, later freed their own slaves. George Mason, a great Virginian, himself a slave-owner, spoke of the slave trade as the "infernal traffic" and eloquently denounced what he termed that petty tyrant, the slave-owner. He gave as one reason for not signing the Constitution at the end, its failure to abolish slavery by constitutional edict.

On the other hand, the southern states of Georgia and South Carolina, in particular, were definitely committed to the continuation of human slavery. So great was their feeling on the subject that any plan which would have provided for its eradication would have prevented the making of a Constitution and driven those states from the Union, and Charles Cotesworth Pinckney, one of the fine men from South Carolina and a future candidate for President of the United States, declared on the Convention floor that a vote to abolish the slave trade would be regarded by South Carolina as a



polite method of driving it from the Union. It is difficult for the present-day generation to imagine such a position on the part of any civilized people, but we must remember that slavery was then a recognized and economically highly important institution.

The question of its abolition was therefore not proposed, and was probably never near serious consideration. The only issue was the question of the control and regulation of the slave trade.

That issue had first raised its head when the plan of choosing members of Congress on the basis of population was proposed. If Congressmen were to be elected by popular vote, how were the slaves of the south to be regarded, as people or as property? Gerry, of Massachusetts, had sarcastically declared that the North should be allowed to count its horses and cows in making up its population if slaves should be counted in the South, since in the eye of the law all were regarded as property.

After much debate, it had finally been agreed that the slave population of the South should be counted on a three-fifths basis, that each Negro would count for three-fifths of one person in all estimates of population upon which congressional representation was to be based, or in other words, that five slaves were to be reckoned as three free persons. The compromise was suggested by Madison, who had seen the same issue arise a few years before in the Continental Congress, when an unsuccessful effort had been made for apportioning national taxes on the basis of population rather than of wealth, the basis generally adopted.

An even more acute aspect of the issue next arose. Slaves up to that time had been imported from Africa to the states, though all of them except South Carolina and Georgia, whose slave populations were still insufficient to work their plantations, were anxious to end the nefarious traffic. The rice and indigo planters of these states felt that their future depended upon slave labor, of which they as yet had an insufficient supply.

But the determination of this delicate issue of the slave traffic, which was of great concern to the South, had to await the question of the regulation of commerce, which was of more concern to the eastern states where the great commercial centers were located. The regulation of interstate and foreign commerce by Congress had

been the one great issue which had stood out above all others, in the various plans which led to the Constitutional Convention. New Jersey in particular had been vitally interested in commercial regulation and had hesitated to sign the original Articles of Confederation because they did not contain plans for the regulation of such commerce by the Continental Congress. New York, as a great and growing commercial center, had shown a selfish commercial policy and had incurred the ill will of Connecticut on the north and New Jersey on the south. Each of these states desired the best bargains possible in planning for future commercial laws to be enacted by the Congress to be established under the new Constitution. Rhode Island had stayed away from the Convention rather than surrender any part of its own highly advantageous position in the existing state of affairs.

But the plan of the eastern commercial states that all navigation acts be passed by a mere majority vote of Congress was opposed by the southern delegates, who feared that the result of such law-making would result in higher freight rates at the hands of the ship-owning North, upon whom southern rice, indigo, and tobacco owners were largely dependent for ships to carry their products to foreign shores. Mason, as well as Randolph, protested to the end against the enactment of commercial laws by a mere majority vote, and so stated when they refused to sign the Constitution.

It was out of this complex situation that the great and far-reaching compromise was effected between the commercial North and the agricultural South. A bargain, as Gouverneur Morris called it, was made, and the two issues of regulating the slave trade and regulating commerce were solved together. The importation of slaves was allowed to continue until 1808, a bitter pill to the states of New Hampshire, Massachusetts, and Connecticut, where strong anti-slavery sentiment prevailed. On the other hand, it was agreed that navigation acts and all other acts for the regulation of commerce should be passed by a majority vote in Congress, and that no tax should be fixed on exports, which the rice and indigo planters of the South demanded to protect their principal products, the greater part of which were sold abroad; on the other hand, a tax of \$10 was fixed on each imported slave. South Carolina and Georgia

yielded to their own fears in assurance of the importation of slaves for a little while longer, although in the last two days of the Convention they went so far as to ask for and obtain a further provision that the guarantee of the slave traffic was not to be the subject of amendment during the period it was to be effective. In 1808, during the administration of Jefferson, the inhuman traffic sanctioned by the Constitution came to an end, but slavery itself continued in the United States until destroyed by the stern arbitrament of the sword more than another fifty years later.

The slave population of the United States in 1790, when our first census was taken, was 697,897. Virginia with 293,427 had the largest number, while Vermont with only seventeen slaves had the fewest. There were no slaves in Massachusetts, where slavery was prohibited by its first constitution. More than twenty per cent of the population of the entire country at that time consisted of slaves.

#### IV

#### PLANNING FOR A PRESIDENT

THE manner in which the President should be chosen next occupied the attention of the delegates. The issue was to prove one of the most prolonged of the Convention, more different plans being offered for its solution than for the solution of any other, and the final decision only coming in the last days of the Convention.

But before the question of the Presidency was taken up, another question was raised by Madison which was of particular interest to many of those present, and was not to be settled at this time, but the ultimate outcome was to have considerable effect on the provision in regard to the powers of the Federal courts, and the provision prohibiting states to impair the obligation of contracts.

Madison's motion proposed to give the national Congress power to veto any act passed by a state legislature. It was his pet project, prompted by his fear of the then widespread efforts of state legislatures to pass laws permitting certain classes to avoid payments of just debts, and moratoria such as have prevailed at intervals since that time; for threats of such legislation were important factors in prolonging the economic crisis in which the country then found itself. But Gouverneur Morris reminded the Convention that the Judicial Department of the new government was the department which properly should possess such power, and only Virginia, Massachusetts, and North Carolina supported Madison when the question was put to a vote. The address of Gouverneur Morris was one of the few references in the Convention to the power of the Federal courts to declare acts of the state or Federal legislatures unconstitutional.

The Convention now took up in detail the question of the Presidency. The word "President" itself was not unknown to the mem-

bers present, for two of the states (Pennsylvania and New Hampshire) called their chief executive by that title, and three of the delegates present (Franklin, Langdon, and Rutledge) either bore or had borne that title. But the president of a state within a union of states was not the same as the "President" of the Union itself, and the delegates in practice had no more recent precedent in history to go by than that of the Holy Roman Empire, whose Emperor had once perhaps been freely elected, but whose office had for two hundred and fifty years before their day been associated with everything that every inhabitant of the United States had been taught to look upon as a thing to be avoided on the North American continent. The delegates therefore approached the subject of the powers and the manner of choosing their future executive cautiously and with trepidation.

The plan of the committee of the whole provided for the President to be elected by Congress. This was not universally popular. Gouverneur Morris argued that a President so chosen, subject to impeachment by Congress, would be corrupted by it. He suggested instead that the people at large elect the President. Mason, of Virginia, one of the great debaters of the Convention, replied by ridiculing Morris' plan for the popular election of the President, declaring that it would be as reasonable to ask a blind man to choose colors as to leave the choice of a President to the people at large. Wilson supported Morris, while Charles Pinckney approved the position taken by Mason. When the Convention voted on the Morris motion, Pennsylvania was alone in voting for it.

But on the other hand, when Luther Martin, of Maryland, suggested that the President be chosen by electors appointed by the states, a proposal similar to the plan finally adopted, Delaware and Maryland were at first alone in supporting that plan. The idea of an electoral college was not a new one in history, as was brought out in the discussion, it being closely analogous to the college of cardinals which elects the Pope.

The Convention then unanimously approved the original plan for the President to be chosen by the national legislature for a term of seven years, but after much debate, it voted six to four to strike

out a clause making the President ineligible for a second term. Gouverneur Morris had argued that the hope of a second term would put the President on his good behavior, and Delaware, Virginia, North Carolina, and South Carolina were alone in voting for the one-term plan. Broom was for a shorter term than seven years.

Dr. McClurg, of Virginia, now delivered one of his few addresses to the Convention. He wanted the President to serve indefinitely, that is, during good behavior, and argued for the complete independence of the Executive, which he thought could only be obtained in that way. Gouverneur Morris supported him frankly, stating he did not care how the President was chosen if he should serve during good behavior. Broom also agreed with Morris, and Madison delivered a learned address showing the necessity of keeping the departments of the Government separate and distinct. Mason, on the other hand, saw in Dr. McClurg's plan one which would lead to a monarchy. New Jersey, Pennsylvania, Delaware, and Virginia voted in favor of the McClurg motion to allow the President to serve during good behavior, but Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, and Georgia opposed it and the motion was lost.

Without debate the Convention provisionally approved a plan for the President to veto acts of Congress and also the plan for a national judiciary, except the provision for the judges of the courts to be appointed by the Congress, which evoked a lively debate.

On the subject of the appointing power, Gorham, of Massachusetts, was the author of the plan which finally prevailed, whereby the President appoints the judges with the advice and consent of the Senate, a plan taken from the Constitution of Massachusetts. Luther Martin wanted the Senate to choose the judges, as did Sherman, of Connecticut, and Randolph, of Virginia. Madison wanted at least one-third of the House to approve of judicial appointments by the President; Bedford, of Delaware, objected to the President alone choosing the judges, but Massachusetts and Pennsylvania alone voted to allow the President to name the judges of the courts without the aid of the Senate. The first vote on the Gorham plan resulted in a tie, four states—Massachusetts, Pennsylvania, Maryland, and Vir-

ginia supporting it, and Connecticut, Delaware, North Carolina and South Carolina opposing it. Georgia was absent.

Much debate arose over the original provision for no change in the salaries of judges during their tenure of office. (The salary of members of the United States Supreme Court was \$3,500 per year during the first thirty years of its existence.) Virginia and North Carolina voted against such an increase.

Luther Martin opposed the plan, unanimously adopted, which allowed Congress to establish inferior courts.

The Convention debated with much heat the provision in the Constitution guaranteeing to each state a republican form of government. Fear was expressed by Gouverneur Morris and Houstoun, of Georgia, that such a provision would protect some of the then unpopular state governments, reference being made to conditions in Rhode Island and in Georgia. Martin wanted the states to suppress their own rebellions, but Gorham called attention to the danger of state dictatorship without the authority of the Federal Government to suppress such movements. The Convention finally approved the provision.

When the Convention met on July 19th, Luther Martin made another effort to remove the clause which allowed the President to be re-elected. The course of the discussion of this proposal made plain that the question of eligibility for re-election depended to a large degree on the manner ultimately chosen for electing the President.

Gouverneur Morris spoke at length on this subject, followed by Randolph, who supported the position taken by Luther Martin, stating that a one-term President would be much more independent of Congress than one who aspired for re-election at its hands. King thought fitness should govern the re-election of a President, as did Paterson, who, however, suggested that the President be chosen by electors chosen on the basis of the size of the states to be represented. Wilson expressed satisfaction in this apparent growth in popularity of the idea of choosing the President by popular vote, and Madison also approved the idea of electors choosing the President for the same reason. Gerry wished to modify the proposal by suggesting that the governors of the states name electors who in turn would choose the President. Ellsworth offered a plan for the President to be chosen by electors appointed by the state legislatures, but this was opposed by

Rutledge. Six states (Connecticut, New Jersey, Pennsylvania, Delaware, Maryland and Virginia) supported the Ellsworth plan to have electors choose the President, and eight states voted for such electors to be chosen by the legislatures.

With this accomplished, the Convention next voted against the Luther Martin motion for making the President ineligible for a second term, as well as against the motion that the President serve for a seven-year period. Ellsworth then suggested a six-year term for the President, which only Delaware opposed.

Dr. Williamson, of North Carolina, moved that the number of electors be equal in number to the membership in the House of Representatives.

Gouverneur Morris and Charles Pinckney opposed any plan for impeaching the President, while Davie, Wilson, Madison, Randolph and Franklin argued the need for some manner of restraining the Chief Executive. Gerry declared "a good President fears no impeachments and bad ones should be kept in fear of them." King doubted the independence of the President if impeachment were possible, but admitted that provision for impeachment was necessary unless he held office during good behavior. After much debate, Gouverneur Morris announced that he had been convinced, by the arguments advanced, of the need for impeachments, which idea prevailed by a vote of eight to two, only Massachusetts and South Carolina opposing.

Gerry and Gouverneur Morris were the joint authors of a provision against Federal office-holders serving as electors, or an elector being voted upon for President.

Wilson offered a resolution requiring the Supreme Court to join the President when he exercised his power to veto acts of Congress, on which the delegates had voted in the negative only a few days before. Such a plan, he argued, would prevent unjust, unwise and dangerous legislation even if it was clearly constitutional. Ellsworth approved the Wilson plan, while Gorham opposed it. Gorham later in debate argued that the judges would not only dominate the President in a function which rightfully belonged to him alone, but would thereafter themselves not be free to act on such laws when laid before them in their judicial capacity. Madison argued for the motion, de-



claring that it would protect the courts against legislative encroachments and give added confidence in the wisdom of a presidential veto. He also argued that it would assist in checking the enacting of unwise and unjust laws by the legislative department. Mason, of Virginia, approved Madison's position.

Gerry objected to the Wilson plan and thought a better one would be to have persons of proper skill draw bills for legislative proposals. Strong agreed with his colleague, Gerry, and argued that the expounders of the law should have no connection with its making.

Gouverneur Morris, in arguing for the Wilson plan, in a prophetic address predicted future floods of proposed laws for emission of paper money, gratuities to the people, and the remission of debts. Luther Martin strongly opposing the Wilson plan, argued that the legislative department should be subject to no such restrictive influence in making laws, and pointed out that the judges would be in position to pass later on the constitutionality of laws.

Mason also reminded the Convention that laws, even though constitutional, might often be unwise, and that it should not be put within the province of a judge to pass merely on the wisdom of a law. Rutledge thought judges should not give an opinion on a law until called for in the course of litigation actually before them for decision. In the end only Connecticut, Maryland, and Virginia supported the Wilson plan for the judges of the Supreme Court to assist the President in his revisionary powers. It was then voted unanimously to give the power of veto to the President unless overridden by the two-thirds vote of each House.

The Convention then resumed discussion of the Madison plan for the President to appoint the members of the Supreme Court unless opposed by two-thirds of the membership of the Senate. Madison argued for a judiciary independent of the legislative department and against a court selected by the Senate alone, which Charles Pinckney had urged; Randolph and Gouverneur Morris supported Madison; Ellsworth agreed with Charles Pinckney; Mason thought the scheme gave the President too much power. Only Massachusetts, Pennsylvania and Virginia supported the Madison proposal. It was then voted to continue the plan agreed upon, that the Senate name the

members of the Supreme Court. Only Massachusetts, Pennsylvania and Virginia opposed it.

John Langdon and Nicholas Gilman, of New Hampshire, took their seats for the first time when the Convention met on Monday, July 23rd.

Much debate arose on that day over the question of public officers taking oaths to support the Constitution. Williamson wanted all national officers to swear also to support all state constitutions. The Convention had voted that provision should be made for amending the Constitution, and the question was asked whether an oath to support the Constitution would not be inconsistent with an advocacy of changes in the Constitution. Gorham pointed out that an oath to sustain an existing Constitution would not preclude the taker of such an oath from supporting its alteration in a manner specified in the Constitution itself. Gerry agreed with his colleague, Gorham's, position and it was voted to require an oath to support the Constitution from all officials of the United States and the several states.

The next difficult question to be considered was that of the manner of ratifying the Constitution.

Ellsworth and Paterson moved that it be referred to the state legislatures for ratification. Mason wanted it referred directly to the people, since a succeeding legislature could undo the work of a previous one. Randolph agreed with Mason and called attention to the known fact that a number of the state legislatures would oppose it.

Gerry did not believe the people would oppose merely because their leaders opposed, and he was for submitting the question of ratification directly to the people. Gorham thought the state leaders, who would have some of their powers taken from them under the proposed new national scheme, would react unfavorably, and that instead of submitting the question to legislatures controlled by such leaders, parties such as the people who had no selfish motive in perpetuating the power of the state governments would be the more desirable to consider it. Gorham suggested also that the unanimous approval of the states should not be required before the Constitution became effective.

King argued for referring the Constitution to conventions elected by the people, to which Gouverneur Morris raised a difficulty, pointing out that use of the popular convention was a piece of governmental machinery unknown and not provided for at all as a means of amending the Articles of Confederation. Madison pointed out that the difference between a league and a constitution rested on where its authority lay, the first deriving power directly from the states, the second directly from the people, and that the people were therefore the ones who should be asked to ratify. When it came to a vote, Connecticut, Delaware and Maryland were alone in supporting Ellsworth's motion to refer the Constitution to the state legislatures, and Gouverneur Morris received no support when he suggested one general convention of all the states to act on ratification.

The Convention then voted unanimously (except Delaware) to submit the Constitution to conventions in each state chosen by the people after its approval by Congress.

Gouverneur Morris and King then moved that the voting by members of the Senate be per capita and not by states, Morris suggesting three Senators to each state. Gorham and Mason stated that three Senators were too many; Pennsylvania was alone in voting for three; two from each state was then decided upon, only Maryland opposing.

On the motion of Gerry it was then voted that the proceedings of the Convention, except the part relating to the executive, be referred to a committee to prepare and report a constitution conformable thereto. This motion carried, but as a parting warning to the committee Charles Pinckney again warned the Convention that any constitution which provided for the emancipation of slaves or placed a tax on exports would be opposed by him.

The Convention now turned its almost exclusive attention to the unfinished plan for electing the President.

Houstoun and Spaight wanted Congress instead of the state legislatures to appoint the electors who would choose a President. Gerry declared that such a plan would require the President to be elected for one term only. Strong disagreed with Gerry's position. Williamson suggested that the Convention return to the original plan of electing the President for seven years and making him ineligible for

re-election. Williamson would have agreed to a ten- or twelve-year term for the President, and freely predicted that America would soon again have a king.

Gerry then suggested that each state legislature vote at once for a President instead of voting for electors, and in case no candidate had a majority of the votes of the states, the House of Representatives would choose two out of the four highest candidates, and from those two the Senate would choose the President. King seconded the Gerry motion, which was not voted upon.

The Convention then voted seven to four on Houstoun of Georgia's motion that the President be chosen by the Congress as had been originally proposed, only Connecticut, Pennsylvania, Maryland and Virginia opposing it.

Luther Martin and Gerry then brought up again the question of making the President ineligible for a second term. Gerry thought the President should serve ten, fifteen, or even twenty years if necessary. King opposed Martin and Gerry. King jestingly suggested fixing twenty years as the presidential term.

Wilson, after speaking of the possible advantages of some purely arbitrary manner of making the selection, suggested that the President be chosen by a committee of fifteen members of Congress, chosen by lot, who should meet and select the President. Gouverneur Morris opposed the plan thus offered. Wilson, seconded by Carroll, then put his previous suggestion as a motion, but the issue was put aside temporarily; Rutledge, Randolph, Gorham, Ellsworth and Wilson were chosen as members of a committee on detail, to which were referred several additional suggestions offered by Pinckney and Paterson after the committee of the whole had been discharged.

When the Convention met on July 25th, the debate over the method of choosing the President was further complicated by a motion from Ellsworth that the executive be appointed by the national legislature, except when the magistrate last chosen had continued in office the whole term for which he was chosen and was ineligible for re-election, in which case the choice would be by electors appointed by the state legislatures for that purpose. Gerry also suggested that the President be chosen by the governors of the states with the advice of their councils.

Madison cleared the air by elaborating on the numerous plans proposed, which he declared resolved themselves into a choice between election directly by the people and by electors chosen by the people. He preferred the latter plan or an election by Congress, though he declared the popular election would be preferable above all others, if it were at all possible under the conditions of the suffrage which then existed.

New York, Connecticut, Pennsylvania and Maryland were the only states which supported the Ellsworth motion. Charles Pinckney then suggested that no man should serve more than six years out of twelve as President. Mason approved the Pinckney suggestion and said he preferred that Congress choose the President. Butler declared himself in favor of the electoral system and opposed to election by the people. He was also against a second term.

Gouverneur Morris also favored rotation in office. "Change of men means change of measures. Perhaps a Rehoboam will not imitate Solomon." He favored election by the people in theory, but thought the electoral system the most practical. Election by Congress he considered the worst system.

When the Convention met on July 26th, the last day of this period, Mason analyzed the several plans proposed for choosing a President, as follows: (1) by the people at large, (2) by the legislatures of the states, (3) by the governors of the states, (4) by electors chosen by the people, (5) choice from several candidates (how to be chosen is not stated in Madison's notes), (6) the Dickinson plan for each state to have a candidate, from among whom Congress would choose, (7) a lottery scheme which Wilson suggested. Mason concluded by saying that election for seven years by Congress with no privilege of re-election was best, and so moved. Davis seconded the Mason motion, which prevailed for the time by a vote of seven to three, Connecticut, Pennsylvania and Delaware opposing it.

Williamson next discoursed on the disadvantages of a popular election, and the dangers of election by Congress. Madison suggested putting a limitation on the number of years Presidents from the same state should serve in succession. Gerry saw a danger that an organized group such as the Society of the Cincinnati, the American Legion of that day, respectable, united, and influential, would control the

popular election of a President. Charles Pinckney's earlier motion for a President to serve only six years out of twelve was then defeated by a vote of six to five, New Hampshire, Massachusetts, North Carolina, South Carolina supporting it and Connecticut, New Jersey, Pennsylvania, Delaware, Maryland and Virginia opposing it.

The Convention then voted on the whole resolution relative to choosing a President, which was approved by all the states except Pennsylvania, Delaware and Maryland. The vote of Virginia was divided, Blair and Mason voting aye while Washington and Madison voted no.

Mason wanted to fix certain qualifications of landed property and citizenship for members of Congress, and to keep persons with unsettled debts owed to the Government out of Congress, warning against debt evasion. Charles Pinckney seconded the Mason motion, which led to brief addresses by Gorham, Madison and Gouverneur Morris. The two Pinckneys wanted the same restrictions to apply to the Executive and Judiciary, and the motion was amended accordingly. King and Dickinson opposed any plan to place restrictions on qualifications for membership in Congress.

Madison moved to remove the word "landed." He called attention to three great classes of property-owners of that day—the landed, commercial, and manufacturing. Only Maryland opposed the Madison motion. Then all of the states but Connecticut, Pennsylvania, and Delaware voted for that part of the Mason motion imposing qualifications of property and citizenship.

Carroll then moved to strike out that portion of the Mason motion which kept out of Congress parties with unsettled accounts owing to the United States. Gorham pointed out that the provision would be unfair to the commercial and manufacturing part of the people. Wilson reminded the Convention that it was writing a constitution for the future as well as for the present, and Gouverneur Morris further showed how every importer was a public debtor. New Jersey and Georgia were alone in opposing the Carroll motion, and this qualification for office was also dropped.

Mason then spoke against the future permanent national capital being in any state capital city, which he thought would cause a clash over jurisdiction and give national affairs a provincial aspect, and

moved a provision to that effect. Alexander Martin seconded the Mason motion, which evoked much discussion from Langdon, a new member, Gorham, Gerry, Williamson, and Charles Pinckney, before it was withdrawn.

The Convention then adjourned for ten days until Monday, August 6th. Randolph's resolutions, which had been enlarged from fifteen to nineteen since their first submission, were delivered to the committee on detail with instructions to prepare a plan of government based thereon and to report the same when the Convention reconvened. The Rubicon had been crossed, a definite agreement on most major points had been reached, and a concrete proposal could now be formulated with some confidence of ultimate success.

Randolph's nineteen resolutions, as amended and referred to the committee, were as follows:

1. Resolved, That it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.

2. Resolved, That the national legislature ought to consist of two branches.

3. Resolved, That the members of the first branch of the national legislature ought to be elected by the people of the several states, for the term of three years; to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the first branch,) during the term of service, and under the national government, for the space of one year after its expiration.

4. Resolved, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years, at least; to hold their offices for a term sufficient to insure their independency—namely, seven years; to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any offices established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch,) during the

term of service, and under the national government, for the space of one year after its expiration.

5. Resolved, That each branch ought to possess the right of originating acts.

6. Resolved, That the national legislature ought to be empowered to enjoy the legislative rights in Congress by the Confederation; and, moreover, to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the articles of union, or any treaties under the authority of the Union.

7. Resolved, That the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including persons not comprehended in the foregoing description, except Indians not paying taxes, in each state.

8. Resolved, That the rights of suffrage in the second branch of the national legislature ought to be according to the rule established for the first.

9. Resolved, That a national executive be instituted to consist of a single person; to be chosen by the national legislature, for the term of seven years; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second term; and to be removable on impeachment and conviction of malpractice, or neglect of duty; to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service, to be paid out of the national treasury.

10. Resolved, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed unless by two-third parts of each branch of the national legislature.

11. Resolved, That a national judiciary be established to consist of one supreme tribunal; the judges of which to be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.



12. Resolved, That the national legislature be empowered to appoint inferior tribunals.

13. Resolved, That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachment of any national officers, and questions which involve the national peace and harmony.

14. Resolved, That provision ought to be made for the admission of states, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. Resolved, That provision ought to be made for the continuance of Congress and their authorities, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

16. Resolved, That a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States.

17. Resolved, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

18. Resolved, That the legislative, executive, and judiciary powers, within the several states, ought to be bound, by oath, to support the articles of union.

19. Resolved, That the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly, or assemblies of representatives, recommended by the several legislatures to be expressly chosen by the people to consider and decided thereon.

## V

### A CONSTITUTION IS FORMULATED

**W**HEN the Convention re-assembled on August 6, 1787, its members were in much better spirits than when they had adjourned ten days before. It was a hot summer in Philadelphia, and the brief respite from their great labors had meant much to the tired and anxious delegates. Time and distance of course had not allowed many of them to go home to refresh themselves, but no doubt the taverns of Philadelphia saw the more of the city's great guests. Washington, who liked to fish, had slipped away to try his hand with Gouverneur and Robert Morris in the Delaware River nearby, and others had gone down to the river to watch with amazement and speculate upon the future of Fitch's first demonstration of a steamboat, the immediate predecessor of Fulton's first commercially successful side-wheeler.

A new delegate, John Francis Mercer, of Maryland, one of its youngest, appeared on the Convention floor to begin his eleven-day attendance, during which he talked a great deal and opposed most of what was done.

The first and by far the most important part of the day's proceedings on August 6th was the reading of the report of the committee on detail, to whom the enlarged Virginia, the Pinckney, and the New Jersey plans had been submitted on July 26th. No records of the committee's deliberations during the ten-day period have come down to us, for, as usual, the committee's proceedings were secret and none of the members apparently saw fit to keep private records. We can therefore only speculate from the terms of the committee's report what the numerous knotty problems were with which its members still had had to wrestle in their sultry rooms.

John Rutledge, as chairman, read the first detailed draft of a Constitution to be placed before the delegates, as agreed upon by the committee after considering the several proposals submitted. The proposed constitution was as follows:

## DRAFT OF A CONSTITUTION

We, the people of the states of New Hampshire, Massachusetts, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish, the following Constitution of the government of ourselves and our posterity:

Art. I. The style of this government shall be, "The United States of America."

Art. II. The government shall consist of supreme legislature, executive, and judicial powers.

Art. III. The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate, each of which shall, in all cases, have a negative on the other. The legislature shall meet on the first Monday in December every year.

Art. IV, Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several states comprehended within the Union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be elected.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in the different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States,—the legislature shall, in each of these cases, regulate the number of representatives by the number of in-

habitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the states in the representation from which they shall happen.

Art. V, Sect. 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive, until the next meeting of the legislature. Each member shall have one vote.

Sect. 2. The senators shall be chosen for six years: but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year;—so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen of the United States for at least four years before his election and shall be, at the time of his election, a resident of the state for which he shall be chosen.

Sect. 4. The Senate shall choose its own president and other officers.

Art. VI, Sect. 1. The times and places, and the manner, of holding the elections of the members of each house, shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time be altered by the legislature of the United States.

Sect. 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as to the said legislature shall seem expedient.

Sect. 3. In each house a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each house shall be the judge of the elections, returns, and qualifications, of its own members.

Sect. 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each house shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each house may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Sect. 7. The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings, and shall, from time to time, publish them; and the yeas and nays of the members of each house, on any question, shall, at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the . . . . . article.

Sect. 9. The members of each house shall be ineligible to, and incapable of holding any office under the authority of the United States during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each house shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

Sect. 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate, of the United States, in Congress assembled."

Sect. 12. Each house shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill, which shall have passed the House of Representatives, and the Senate, shall, before it become a law, be presented to the President of the United States, for his revision. If, upon such revision he approve of it, he shall signify his approbation by signing it; but if, upon such revision, it shall appear to him improper for

being passed into a law, he shall return it, together with his objections against it to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill; but if, after such reconsideration two-thirds of that house shall, notwithstanding the objections of the President, agree to pass it, it shall likewise be reconsidered; and if approved by two-thirds of the other house also, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered in the journal of each house respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case, it shall not be a law.

Art. VII, Sect. 1. The legislature of the United States shall have power to lay and collect taxes, duties, imports, and excises.

To regulate commerce with foreign nations, and among the several states;

To establish a uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post-offices;

To borrow money and emit bills on the credit of the United States;

To appoint a treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any state, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions; and,

To make all laws that shall be necessary and proper for carrying

into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or in any department or office thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them, and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants, of every sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such manner as the said legislature shall direct.

Sect. 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two-thirds of the members present in each house.

Sect. 7. The United States shall not grant any title of nobility.

Art. VIII. The acts of the legislature of the United States made in the pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions; anything in the constitutions or laws of the several states to the contrary notwithstanding.

Art. IX, Sect. 1. The Senate of the United States shall have the power to make treaties and appoint ambassadors, and judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting juris-

diction or territory, the Senate shall possess the following powers: Whenever the legislature, or the executive authority, or the lawful agent of any state in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority of the other state in controversy. The Senate shall assign a day for the appearance of the parties, by their agents, before that house. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question.

But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons each party shall, alternately, strike out one, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as the Senate shall direct in their presence be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges, who shall hear the cause, agree in the determination. If either party shall neglect to attend at the day assigned without showing sufficient reasons for not attending; or, being present, shall refuse to strike, the Senate shall strike in behalf, of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly hear and determine the matter in question, according to the best of his judgment without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or three more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the Senate, be finally determined as near as may be, in the same manner as is before prescribed for deciding controversies between different states.



Art. X, Sect. 1. The executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America;" and his title shall be, "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years, but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the legislature of the states of the Union. He may recommend to their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In cases of disagreement between the two houses with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States, and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department he shall take the following oath or affirmation: "I, \_\_\_\_\_, solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the president of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

Art. XI, Sect. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as shall, when necessary, from time to time be constituted by the legislature of the United States.

Sect. 2. The judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behavior. They shall, at

stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers, and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states, except such as shall regard territory or jurisdiction; between a state and citizens thereof, and foreign states, citizens, or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned, (except the trial of the President of the United States,) in the manner, and under the limitations, which it shall think proper to such inferior courts as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachment,) shall be in the state where they have been committed, and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend farther than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Art. XII. No state shall coin money; nor grant letters of marque or reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

Art. XIII. No state, without the consent of the legislature of the United States, shall emit bills of credit, or make anything but specie a tender in payment of debts; lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted.

Art. XIV. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Art. XV. Any person charged with treason, felony, or high misde-

meanor, in any state, who shall flee from justice, and shall be found in any other state, shall on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence.

Art. XVI. Full faith shall be given in each state to the acts of the legislatures and to the records and judicial proceedings of the courts and magistrates of every other state.

Art. XVII. New states, lawfully constituted or established within the limits of the United States, may be admitted by the legislature into this government; but to such admission the consent of two-thirds of the members present in each house shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislature of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting.

Art. XVIII. The United States shall guaranty to each state a republican form of government; and shall protect each state against foreign invasions; and, on the application of its legislature, against domestic violence.

Art. XIX. On the application of the legislature of two-thirds of the states in the Union for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

Art. XX. The members of the legislature, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution.

Art. XXI. The ratification of the conventions of . . . . . states shall be sufficient for organizing this Constitution.

Art. XXII. This Constitution shall be laid before the United States in Congress assembled, for its approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

Art. XXIII. To introduce this government, it is the opinion of this Convention that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of states, should appoint and publish a day, as early as may be,

and appoint a place for commencing proceedings under this Constitution; that, after such publication, the legislatures of the several states should elect members of the Senate, and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be, after their meeting, choose the President of the United States, and proceed to execute this Constitution.

Immediately after the report and draft of the Constitution had been read, an unsuccessful effort was made to adjourn again for two days in order that the committee's report might be studied, and when the Convention met next day young Charles Pinckney, whose plan had been largely ignored by the committee, also urged that its plan be referred to a committee of the whole. Gorham, of Massachusetts, who had served as chairman of the committee of the whole when the Convention first met, was the leader of those opposed to such a reference, and only Delaware, Maryland, and Virginia supported Pinckney's motion. The Convention then took up the report and considered each article separately.

One of the first arguments arose over fixing the time for Congress to meet. Gouverneur Morris wanted Congress to have its annual session begin in May instead of December, since European measures were planned in the winter and a spring meeting would be the best time to take such action as the occasion might require on America's part. Madison agreed with Morris and added that May was a better time to travel to the capital, a matter of much concern in a day when there were no modern highways or fast, comfortable means of travel. Ellsworth, on the other hand, argued that a May meeting of Congress would interfere with the private affairs of its agricultural members, and only South Carolina and Georgia favored May as the time for meeting when the vote was taken.

George Read, of Delaware, and Gouverneur Morris wanted the President to have an absolute veto on all legislation, but they were supported in that position by the vote of Delaware only.

Gouverneur Morris, who feared that people without property would sell their votes to the rich and thereby allow an aristocracy to control the government, wanted only freeholders, that is, owners of

real estate, to be electors, in which position he was aided by his colleague, Fitzsimmons. Franklin replied by again sustaining his position as the father of American democracy, and defended the right of all, regardless of land or other wealth, to have a voice in their government. Morris was also opposed by Wilson, Williamson and Ellsworth. Dickinson supported Morris and warned the Convention of the danger from electors without property or principle.

George Mason, of Virginia, was next responsible for changing from three to seven years the time of residence within the United States required to be a Congressman. He saw a chance for foreign nations to obtain undue influence by insidious methods when immigrants could be elected to Congress three years after reaching America. Only Connecticut opposed the change to seven years as it now stands.<sup>1</sup>

Rutledge wanted a citizen to have lived for seven years in the state of his adoption before being eligible to represent that state in Congress, but found much opposition to the idea, since such a requirement would deprive young states of using their best material in electing their members of Congress.<sup>2</sup> It was finally agreed to require a one-year residence in the state represented, although South Carolina and Georgia voted for a three-year residence. It was during this discussion that Gorham made his oft-quoted remark, "Can it be supposed that this vast country, including the western territory, will one hundred and fifty years hence remain one nation?"

But this simple issue could not be adjusted without some reference to the issues of slavery and commerce. In the course of the discussion, King, of Massachusetts, whose state was strong in its anti-slavery sentiment, delivered a caustic address against allowing slaves to be counted at all in estimating population for Congressmen, unless an export tax was placed upon the product of slave labor. Gouverneur Morris also drew a word picture not only of economic conditions but of social life in the slave and anti-slave section of America. He had not been present when the great compromise on counting slaves had been reached a few weeks before, and he was

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<sup>1</sup> As recently as 1933 a Pennsylvania Congressman-elect was challenged because he had not been in America seven years.

<sup>2</sup> Idaho, which became a state in 1890, sent her first native son to Congress in 1933.

bitter in his denunciation of the compromise plan. He suggested the purchase of all slaves by the federal government rather than the perpetuation of slavery in the Constitution. Only New Jersey voted with Gouverneur Morris at this time to eliminate slaves in enumerating population.

Morris also tried to change the plan whereby only the House of Representatives could originate money bills. Madison supported Morris in such a position, but was sustained only by the votes of New Hampshire, Massachusetts, Connecticut, and North Carolina, a minority of the states represented.

When the question of filling vacancies in the Senate arose, Wilson opposed giving the power to the governors of the states. Randolph defended the plan, and Pennsylvania alone supported Wilson in his effort for a different arrangement, although Williamson wanted the legislatures of the states to choose a different method of supplying vacancies if they so desired, in which he was supported by Maryland, North Carolina, South Carolina and Georgia.

Gouverneur Morris tried unsuccessfully to make a fourteen-year residence in America necessary to become a United States Senator, and was supported in such an idea by Charles Pinckney, who thought a long residence necessary since Senators would act on treaties with other countries, and its members should not have too close sympathies with them. Mason agreed with Morris, and even suggested that it would be better if membership in the Senate could be limited to native Americans. Madison argued against such a rigid requirement, since it would discourage the better class of immigrants from coming to America. Franklin wisely reminded the Convention of the help the nation had received from new citizens during the recent Revolution, and of the friendly feeling of many Europeans for America. Randolph was also opposed to the suggestion, and Wilson, who had himself been in America only a little more than twenty years, spoke feelingly against the fourteen-year requirement. When the Convention voted on the question, only New Hampshire, New Jersey, South Carolina and Georgia stood with Gouverneur Morris in his position.

Charles Cotesworth Pinckney next suggested a ten-year residence, but it was finally agreed by a vote of six to four to require a nine-year residence and citizenship to be eligible for the Senate. New

Hampshire, New Jersey, Delaware, Virginia, South Carolina and Georgia voted for the proposal, while Massachusetts, Connecticut, Pennsylvania and Maryland opposed it, and North Carolina remained divided.<sup>3</sup>

When the question of the qualifications for members of the House of Representatives came up, Charles Pinckney, of South Carolina, repeated the previous arguments for a property qualification, as also for members of the federal courts. He suggested that no man should be President who was not worth as much as \$100,000, and that no man should serve in either branch of Congress or on a Federal court who possessed less than \$50,000 worth of property, and that an oath be required of all these officers relative to their financial status. He was supported by Rutledge in such a plea. Ellsworth opposed him, as did Franklin, who declared that some of the greatest rogues he had ever seen were rich men, and warned against the establishment of a government to be ruled by the rich only. Pinckney's proposals were quickly rejected.

The question of the required citizenship or residence in America for members of the House again was a disturbing question. Wilson and Randolph wanted to make foreigners eligible after four years. Gerry argued for all future Congressmen to be native-born Americans, while Williamson, who feared the influence of wealthy immigrants, preferred nine years. Hamilton would have removed all restrictions, in which idea he was joined by his friend Wilson, who paid a tribute to those who (like himself) had come from other shores and aided in making America. Wilson reminded the Convention that three of the eight Pennsylvania delegates, Robert Morris, Fitzsimmons and himself, were all foreign-born American citizens. Butler, of South Carolina, on the other hand, himself foreign-born and a former officer in the British army, opposed Wilson in his position. Connecticut, Pennsylvania, Maryland, and Virginia supported Hamilton in his idea to remove all restrictions as to length of residence in America for Congressmen.

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<sup>3</sup> Albert Gallatin, who won fame as Jefferson's Secretary of the Treasury, was challenged by the Senate when he was elected to that body from Pennsylvania after being in America slightly less than fourteen years. Rufus King, then a Senator from New York, led the successful fight to keep Gallatin from being seated.

When the Convention took up the requirements for a quorum in Congress, Gorham argued for making less than a majority of the members present constitute a quorum. Gouverneur Morris wanted thirty-three of the sixty-five members of the House of Representatives and fourteen of the twenty-six members of the Senate to constitute a quorum in each, which numbers were finally agreed upon, these figures being a majority of the membership fixed for each branch of the first Congress.

Considerable discussion arose over the publicity of the proceedings of Congress, which had not been the rule in the case of the Continental Congress, which met behind closed doors. In this connection, it may be stated that the Senate of the United States also met behind closed doors during the first five and one-half years of its existence.

Provision was also made that the new Congress should not be able to change its place of meeting with the ease with which the Continental Congress had been able to adjourn from place to place.



## VI

### DAYS OF DETAIL

**W**HEN the Convention met on August 20, 1787, Madison again offered an amendment to the plan for the Constitution which would have required the Supreme Court as well as the President to examine all bills and approve them before they became operative. The failure of either the President or the Court to approve a bill would veto it and require a second passage by Congress by a two-thirds majority to overcome the veto; when both the President and the Court disapproved it a three-fourths majority would be required. The motion was seconded by Wilson, Madison's great ally on the Convention floor. Pinckney opposed it, for he saw the danger of the Court being drawn into partisan positions, in which stand he was supported by his young colleague, Mercer, of Maryland. Mercer went further and strongly opposed giving the Court power in any way to annul an act once passed by Congress. Gouverneur Morris ably defended the Madison proposal, but young Pinckney won when only Delaware, Maryland, and Virginia supported Madison's motion.

Gouverneur Morris then proposed to require a three-fourths vote of both houses of Congress to override the veto of the President, although he would have preferred that the President have the power of absolute veto. Carroll, who seldom spoke, reminded the Convention that in the proposed Congress, where a majority would constitute a quorum and a majority of that quorum could enact legislation, seventeen members of the House and eight members of the Senate would and could control Congress. Williamson moved to change the vote necessary to override a veto from two-thirds to three-fourths and was supported in that move by Wilson. The motion prevailed by a vote of six to four; New Hampshire, New Jersey, Massachusetts and Georgia opposed it, and the vote of Pennsylvania was divided.

There was but little debate on the items named in article seven of

the plan for a Constitution then before them, except over the irksome subject of taxing exports, a subject which had been considered closed after the compromise a few weeks before on the slavery question.

A spirited debate arose when the question of allowing the federal government to emit bills on the credit of the United States or to issue paper money was reached. Gouverneur Morris, who was himself a financier, opposed any such power being given to Congress, reminded the Convention of the havoc which had been caused by the paper money epidemics, and asked that the phrase be struck out of the Constitution. Mercer, a friend of cheap money, opposed Morris, but Ellsworth again reminded the Convention of the harm which had been wrought by the paper money craze, and pointed out its dangers. When the vote on Gouverneur Morris' motion was taken only Maryland and New Jersey voted to retain the clause in the Constitution. The sentiment of the Convention was certainly not Populistic on the money question.

One of the clauses under discussion which evoked considerable interest was the one relative to subduing a rebellion in any state. Little did the members dream of the great rebellion which was to arise out of the unsettled slavery issue three-quarters of a century later, which brought forth the use of this very power. Charles Pinckney, of South Carolina, whose son was one of the leaders in his father's state when the spirit of rebellion arose there during the administration of President Jackson, moved to strike out the phrase "on application of the legislature," and Gouverneur Morris, of Pennsylvania, joined in the motion. Luther Martin and Mercer opposed them and argued that no such authority ought to be in the hands of the Federal government without the consent of the state involved. When Ellsworth wanted the governor of any state first to request such aid, Gouverneur Morris reminded him that such an official might be the one leading the rebellion to be put down. Gerry, who opposed such action against a state, declared any effort to suppress Shays' rebellion in Massachusetts by use of Federal troops would simply have added fuel to the flames. Gouverneur Morris replied by reminding the Convention that one of the purposes of the Constitution was to give force and power to the Federal government, and that here was an opportunity to make provision therefor. The Convention

finally voted to have the phrase read: "on application of the legislature, or without it, when the legislature cannot act." Massachusetts, Delaware, and Maryland alone opposed it. Madison and Dickinson were the authors of an additional clause which made it clear that the revolt referred to should be against the United States, which was unanimously approved.

When the Convention took up the discussion of the provision in regard to the war-making power, Charles Pinckney opposed the placing of such power in the House of Representatives, and favored giving such power to the Senate on account of its better opportunity to know foreign affairs through its treaty-making powers. Butler wanted to put the power in the hands of the President alone. Madison and Gerry jointly introduced a resolution which changed the phrase "make war" to "declare war." The Convention voted against the Pinckney motion and the power to declare war was left in the House of Representatives.

Sherman, rich in political experience and a New England conservative, wanted to authorize Congress to assume the debts of the states, a thing which it did do later when Hamilton became Secretary of the Treasury, although the Constitution was to be left silent on the subject. Rutledge made a motion which was carried to appoint a committee to consider the question, New Hampshire, New Jersey, Delaware, and Maryland only opposing it, and the vote of Pennsylvania being divided. The committee which was appointed consisted of Langdon, King, Sherman, Livingston, Clymer, Dickinson, McHenry, Mason, Williamson, C. C. Pinckney, and Baldwin.

Rutledge, at this monotonous period, frankly expressed his impatience to see the Convention close. Rutledge, it will be recalled, was the chairman of the committee on detail which had offered to the Convention the plan for a constitution then under discussion.

Ellsworth next argued for a President's council to be composed of the President of the Senate, the Chief Justice, and the ministers of state, finance, war, and navy, who should advise the President in public matters. Gerry opposed the inclusion of the head of the Treasury in any group which had power to influence legislation, and opposed including the Chief Justice because he would later be called on to construe legislation.

While this argument was on, the Convention turned to a consideration of the clause in the proposed constitution relative to the raising of a federal army. Gerry was vehement in opposing a large standing army in time of peace, but the Convention voted against placing any limitation on a peace time army. General Charles Cotesworth Pinckney and Captain Jonathan Dayton, both of whom had been Revolutionary soldiers, were against such limitation. Much debate also arose over the matter of Federal regulation of the state militia. Sherman wisely argued that state militia should be used for local purposes only.

Young Charles Pinckney again submitted a number of new propositions which were promptly referred to the committee on detail. Several of his propositions, though not acted upon by the Convention, were later included in the first ten amendments to the Constitution. Among that number was the provision for the freedom of religion and of the press in America. He and Gouverneur Morris also submitted a proposal naming certain cabinet officials to serve as a council of state. This too was referred to the committee on detail.

Mason wanted to enable Congress to enact sumptuary laws, but only Delaware, Maryland, and Georgia supported him in such a plan.

Considerable debate arose over the provision for the definition and punishment of treason. Most of the delegates had participated in the late rebellion and would themselves have been subject to the then extremely harsh and arbitrary English law on the subject if captured or if the rebellion had failed. They accordingly agreed that treason against the United States should consist only of actually levying war against them or giving active aid and comfort to an enemy, that conviction should follow only on the testimony of two witnesses to the same overt act, or on testimony of one witness and confession in open court, and that the punishment for treason should not work corruption of blood so as to make the children suffer for the sins of their fathers.

When the Convention met on August 21st, Governor Livingston, of New Jersey, as chairman of the committee appointed to consider the question of the assumption of the debts of the states and the matter of the militia, submitted the report of that committee.

Gerry was quick to oppose any plan for the assumption of all state debts.

When the discussion turned to the representation to be allowed the states in the new Congress, Langdon surprised the Convention by declaring that New Hampshire had been given too many Congressmen under the apportionment scheme which had been voted upon before the delegates from that state reached Philadelphia.

When the debate again turned to the question of Federal taxes, Luther Martin, aided by McHenry, made an effort to have the old system of requisitions continued in effect until a state should refuse to pay its quota of taxes, when the Federal Government could enact a method of its own for their collection. But New Jersey stood alone in supporting Martin, and even Jenifer and Carroll, both of Maryland, opposed them.

The proposed tax on exports now rose indirectly again to haunt the Convention, illustrating again the old jealousy between the commercial North and the agricultural South, and threatened the harmony of the proceedings. When Clymer suggested an export tax for the purpose of revenue only, New Jersey, Pennsylvania, and Delaware alone voted with him. When Madison and Wilson wanted such a tax provided two-thirds of Congress voted for it, the vote was six to five against them, only New Hampshire and Massachusetts changing their positions and coming to the aid of New Jersey, Pennsylvania, and Delaware. The Virginia vote was divided, Washington supporting Madison in his motion, Blair, Mason, and Randolph opposing him. The Convention finally voted against any kind of export tax, only New Hampshire, New Jersey, Pennsylvania, and Delaware continuing to favor it.

Luther Martin then revived the slavery issue, and once more precipitated a lengthy debate by suggesting a tax on imported slaves.

Rutledge rose to the defense of the original plan, which omitted such a tax, and pointed out that religion and humanity had nothing to do with the question, since interest alone was the governing principle of nations. Ellsworth, of Connecticut, replied, frankly saying that the slavery issue was one for the states to decide, that whatever enriched a part of the Union enriched the whole, that he opposed

the tax on imported slaves, and that the morality or wisdom of slavery was a matter belonging to the individual states. His remarks were unusual, for they came from a New Englander where anti-slavery sentiment was strongest. Charles Pinckney plainly repeated to the Convention that South Carolina would not approve the Constitution if it prohibited the slave trade, although he added that his state might later of its own accord forbid the importation of slaves as Virginia and Maryland had already done.

When the Convention reconvened on August 22nd, Sherman, of Connecticut, took up the discussion where it had ended the day previous. He took the position that further interference with the slave question would very likely destroy all plans for a new government, and that since abolition on the part of the states was growing in popularity in any event, the issue should be kept out of the Constitution. No one on the Convention floor was more bitter in denouncing slavery than Mason, of Virginia, himself the owner of hundreds of slaves, who spoke of it as the "infernal traffic," called slave-owners "petty tyrants," and declared the judgment of Heaven would be against any country which allowed slavery. He declared British merchants had originated the traffic, which began in America a year before Plymouth was settled. He favored the import tax.

Strange as it seems today, Ellsworth again came to the defense of South Carolina and Georgia. He pointed out that Maryland and Virginia could afford to oppose importation since those states were raisers of slaves and therefore not interested in importation. Nevertheless he favored no interference with the plans of Georgia and South Carolina for importing slaves. Charles Pinckney, in also defending slavery as a system, cited the examples of Greece and Rome as slave-owning countries, and its sanction by France, England, and Holland, although he went on to declare that he would vote to stop importation if it became an issue in South Carolina.

General Charles Cotesworth Pinckney, of South Carolina, argued for the necessity of having slaves in his state and in Georgia. His logic was: More slaves, more production; more production of goods, more consumption of goods; hence more revenue for a common treasury. Baldwin, of Georgia, who was a native son of Connecticut, had been a chaplain in the Revolutionary War, and was a minister

of promise before he became a lawyer and statesman, arose and likewise explained the position of Georgia. He contended that the issue was purely a local matter and that it had no place in a plan for a national government.

Dickinson replied by denouncing the slave traffic, and went on to say that he doubted whether the southern states would allow themselves to be kept out of the Union merely because of the prohibition of the slave traffic by the Constitution. Williamson, of North Carolina, explained that North Carolina, while not directly prohibiting the importation of slaves, had fixed a tax on their importation. King and Gerry boldly declared the hostility of Massachusetts and New Hampshire to the whole institution of slavery.

General Pinckney finally admitted the fairness of a tax on imported slaves, like a tax on any other imports, but Butler, of South Carolina, who also had large plantations and innumerable slaves, remained opposed to any such import tax. Rutledge now rose again and assured the Convention that it was, so far as North Carolina, South Carolina, and Georgia were concerned, a question either of a Constitution with slavery or no Constitution at all. Sherman retorted by declaring he would oppose the tax on imported slaves, since to do so would amount to recognition of slaves as property.

It was finally voted to refer the issue to a special committee, New Hampshire, Pennsylvania, and Delaware alone opposing the motion made by Governor Randolph.

Then followed a very vital motion by Charles Pinckney and Langdon that the plan for navigation acts, which as the plan then stood had to be passed by a two-thirds vote of Congress, be referred to a special committee, and only Connecticut and New Jersey opposed the motion. Langdon, King, Johnson, Livingston, Clymer, Dickinson, L. Martin, Madison, Williamson, C. C. Pinckney, and Baldwin were appointed to the committee, to which were also referred the two clauses relative to taxes on imported slaves. It was the second time that the Convention had gone over this very ground.

The Convention voted seven states to three to prohibit *ex post facto* laws. The dangers in such laws had been amply illustrated by the early history of the colonies, and only Connecticut, New Jersey, and Pennsylvania voted against the proposal.

In regard to the provision that the Congress should have power to fulfill all engagements made by the Continental Congress and should have power to provide for suits by foreigners in Federal Courts against citizens of the United States, Madison explained that Americans indebted to British subjects had attempted to evade payment of their debts contracted before the Revolution, and that these provisions were intended to give a clear remedy for the collection of all such public and private debts, the non-payment of which had seriously impaired the country's credit abroad. Gouverneur Morris added a clear-cut amendment to the effect that Congress would discharge the debts and fulfill the engagements of the United States, which was unanimously carried.



## VII

### LABORIOUS DAYS

**T**HE great crises of the Convention were now in large measure past, but many matters of the utmost importance, including the still undetermined manner of electing the President, still lay before the Convention when it met on August 23rd.

The grand committee to which had been referred the question of a state militia first made its report, which proposed that Congress be given the power: To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline presented by the United States.

A lively discussion ensued in which Gerry opposed having the Federal Government exercise any control of the state militia, and Langdon suggested to the Convention that the national and state governments were not enemies. Madison, in a plea for control of the state militia by the Federal Government, reminded the Convention of how the states had failed in meeting the requisitions of Congress when left to their own decision, but when he spoke in support of that part of the resolution empowering the Federal Government to appoint all the general officers of the state militia, a great cry of opposition arose. Sherman and Ellsworth spoke emphatically against the proposal. Gerry warned the Convention that the assumption of too much power by the Federal Government would lead to disaster, and only South Carolina, New Hampshire, and Georgia voted for the Madison motion. The Convention finally amended the proposed clause to allow training the state militia by a uniform Federal plan.

The Convention was unanimous in its vote on the provision against officers of the government receiving gifts from foreign nations without the consent of Congress, and also in the Rutledge resolution

which declared that the Constitution and the laws made in pursuance thereof should be the supreme law of the land.

Charles Pinckney again started a warm debate when he moved that Congress be given power to negative any state law which it thought was against the general interest and harmony of the Union, provided two-thirds of the members of Congress so voted. Broom, of Delaware, who seldom spoke, supported the Pinckney motion. Sherman and Williamson thought such a provision unnecessary. Wilson thought the idea a good one, while Rutledge saw in it the end of state governments. Charles Cotesworth Pinckney suggested in his discussion of the matter that the governors of the states should be appointed by the general government, an idea Hamilton had advocated in his plan for a constitution at the opening of the Convention. Madison moved that Charles Pinckney's motion be referred to a committee, but the Convention by a vote of six to five states refused to do so and Pinckney withdrew his motion.

The Convention was unanimous in voting for Congress to pay all former debts of the government and to have power to lay and collect taxes, duties, imports, and excises, powers which were absolutely necessary to restore the nation's lost credit.

When the Convention took up the clause which provided for the Senate to make treaties, appoint judges, and ambassadors, Madison succeeded in having the plan changed so as to give the President a hand in such appointments and in the making of treaties.

Gouverneur Morris was the author of an amendment which declared that all treaties should be the supreme law of the land. However, only Pennsylvania supported his motion at the time. The question was then referred to the committee on detail.

The Convention had in view the future powers of the Supreme Court when it voted to strike out of the plan before it certain labored provisions for adjusting differences between states, it being agreed that such differences would be adjudicated by the Supreme Court. Under the Continental Congress they had been adjusted by the Congress itself, with only slight success.

The plan for choosing the President, which had been subject to many modifications, again occupied the serious attention of the delegates. There was now unanimous agreement over vesting that

power in one person and in giving such officer the title of "His Excellency."

But when Rutledge advocated the election of a President by a joint ballot of Congress, Sherman opposed him and argued that the Senate should have the power to veto the choice of the House if it so desired. Carroll then moved to strike out the plan for electing the President by Congress, and to substitute the words "by the people." Wilson seconded the Carroll motion, but it was supported by only Pennsylvania and Delaware. Langdon was for a joint ballot of both Houses of Congress, which Wilson, the great champion for the popular election of the President, opposed, but when the vote was taken only Connecticut, New Jersey, Maryland, and Georgia supported Wilson's opposition.

The Convention next voted six to five against a motion by Dayton to allow each state one vote in balloting for President. However, only New Jersey opposed General Pinckney's motion to require a majority vote to elect.

Gouverneur Morris then spoke, and builded better than he knew when he opposed the previously popular plan for electing the President by the national legislature. He warned the Convention of the dangers involved in having a President who would be the creature of the legislative department, and thereby liable to be corrupted by it. He also proposed election of the President by electors chosen by the people, and discussed the effect of not allowing the choice to be made in this way. Carroll seconded the Morris motion, which was the first time such a plan had been proposed on the Convention floor. When the vote on this motion was first taken it was lost by a vote of five to six, New Hampshire, Maryland, North Carolina, South Carolina, and Georgia only voting for it, and the question was postponed for a time.

When the Convention came together again on August 25th, it resumed debate of the proposed plan for payment of the national debt. Mason objected to the phrase "shall discharge," and expressed fear that it would include even the redemption of the long outlawed Continental currency, which had sold for a song and the holders of which Langdon wanted to leave *in status quo*. However, only Pennsylvania opposed a motion by Randolph which declared the debts of the old

Congress equally valid under the new Constitution as under the Articles of Confederation.

The Convention then again took up the controversial slavery issue, which had been referred to a grand committee. General Pinckney, seconded by Gorham, made a motion to extend the time for allowing the importation of slaves to twenty years, or until 1808. The slave state of South Carolina and the commercial state of Massachusetts were thus seen to be working together on the plan. Madison frankly told the Convention the extension of the importation of slaves for twenty years would be more dishonorable to the nation than to say nothing about it at all in the Constitution. Gouverneur Morris suggested that the Constitution state in clear language that the importation of slaves into North Carolina, South Carolina, and Georgia would not be prohibited, which was the clear meaning of the Pinckney motion. However, Mason objected to naming these states lest it give offense to their people, and the Morris motion was withdrawn. The Pinckney motion then prevailed by a vote of seven to four, only New Jersey, Pennsylvania, Delaware, and Virginia voting against it; Virginia was the only southern state which opposed the motion.

When the matter of a tax on imported slaves again arose Madison opposed it, saying it was wrong for the Constitution to consider the idea of property in men. Gorham thought the tax would be a deterrent to importing slaves and should be so considered rather than as a means of revenue. Despite the objections of some of the individual members, the states voted unanimously in favor of a fixed tax of ten dollars per slave on their importation.

Carroll and Luther Martin, of Maryland, who were anxious to protect the interests of Baltimore as a port, expressed a fear that certain American ports would be shown a preference in future legislation dealing with commerce. They accordingly introduced a resolution which would prohibit a tax by any state on a vessel bound for another state, and prevent any kind of favoritism for one port to the injury of another. McHenry, also of Maryland, and General Pinckney, of South Carolina, introduced a lengthy resolution dealing with the question of ports of entry, for the southern cities of Baltimore and Charleston were working hand in hand to protect their maritime interests. The whole question was referred to a committee

consisting of Langdon, Gorham, Sherman, Dayton, Fitzsimmons, Read, Carroll, Mason, Williamson, Butler and Few.

Connecticut alone voted to require the Senate to concur in pardons granted by the President when Sherman made a motion to that effect, but it was agreed that the President could not pardon an official impeached by the Senate.

Only Delaware and South Carolina objected to the President becoming the commander-in-chief of the state militia when the militia were called into the actual service of the United States.

Mason and Madison were the authors of the provision in the oath taken by the President "and will to the best of my judgment and power, preserve, protect, and defend the Constitution of the United States." Delaware only voted against the adoption of this provision, though the delegates from Massachusetts, New Jersey, and North Carolina were absent when the vote on it was taken.

There was but little opposing argument at this time as the Convention took up one by one the several provisions of the Constitution relative to the judicial department of the government. Dickinson made a motion to provide for the removal of Supreme Court judges by the President upon request of Congress, but Gouverneur Morris pointed out that such removal should not take place without a trial of the offending judge or judges. Randolph thought the independence of the judiciary would be weakened by any such provision as Dickinson proposed, and only Connecticut supported the proposal.

Gouverneur Morris introduced a resolution to the effect that the privilege of the writ of habeas corpus should not be suspended, except where in cases of rebellion or invasion the public safety required it. Though the Convention was unanimous in approving the first part of this resolution, North Carolina, South Carolina, and Georgia opposed the latter portion of it.

Wilson and Sherman offered an amendment to the section relative to money which would have limited gold and silver as legal tender for the payment of debts, and would have forbidden the emission of bills of credit. The plan was aimed directly at the advocates of cheap money, and Sherman frankly expressed a desire to smother then and there any chance for paper money to be used in the future. When the vote was taken on that part alone "nor emit bills of credit," only

Virginia opposed it, though the vote of Maryland was divided. The Convention then unanimously approved the Wilson-Sherman resolution.

The Convention voted seven to three to prohibit any new state from passing bills of attainder or *ex post facto* laws, Connecticut, Maryland, and Virginia alone opposing. Madison, in debating this question, still urged that Congress be allowed a negative on state laws.

The question of prohibiting the individual states from fixing a tax on either imports or exports next arose. Sherman had moved that all state taxes on imports or exports should go to the Federal treasury, except for the actual cost of administering such laws. Clymer wanted each state to regulate its own tariff acts, and frankly said it was suicidal for the East to encourage the development of the West. Only Maryland and Massachusetts opposed the Sherman motion.

When the clause dealing with fugitive slaves was reached, Butler and General Pinckney, of South Carolina, wanted them to be treated like other apprehended criminals. Sherman approved this, but the motion was temporarily withdrawn.

The proceedings were again enlivened when the Convention took up the much-discussed question of proposed laws for the regulation of foreign commerce. Charles Pinckney started the fireworks when he introduced a resolution supported by Martin, of North Carolina, requiring a two-thirds vote in Congress for the passage of all legislation on that subject, and preventing any legislation on the subject by Congress by a bare majority. He designated four distinct commercial interests: (1) the fisheries and West Indies trade, which New England controlled; (2) wheat and flour, controlled by New Jersey and Pennsylvania; (3) tobacco, controlled by Virginia and Maryland and to a lesser extent by North Carolina; (4) rice and indigo, controlled by South Carolina and Georgia. General Pinckney frankly told the Convention it was to the best interests of the agricultural South to have no national restrictions on foreign commerce, but that he realized the plight of the commercial North on account of the absence of such regulation. He also referred to the support which the slave-importing states had received from some of the New England leaders, and was quick to declare the prejudices he originally had had against that section had been removed by their liberal atti-

tude on the slavery question. Clymer, a Philadelphia business man, told the Convention the middle states would be ruined without some protection from foreign commerce. New York, on the other hand, favored free trade.

Gouverneur Morris argued against the motion of Pinckney for a two-thirds vote in Congress to pass commercial acts. Williamson argued for the two-thirds vote, while his colleague, Spaight, opposed it, saying the South could, if necessary, build its own ships. Butler was against the motion of Pinckney, his colleague, as were Rutledge, another South Carolinian, and Madison, from Virginia.

Governor Randolph and Mason, both of whom later refused to sign the Constitution, in part because of these provisions in regard to commerce, were strong in their feelings on the subject. Mason reminded the Convention that a majority of Congress would be from the North, and would override the South if the two-thirds provision were omitted, but Gorham intimated that the failure to allow commercial laws enacted by a majority vote of Congress might cause the New England States to remain out of the Union for their own protection. It was then voted unanimously to strike out the proposal requiring a two-thirds vote.

Gouverneur Morris, who feared the growing West, opposed the admission of new states on the same terms as the old states. Mason agreed that it might be a good thing to halt the emigration to the West, but admitted that it could not be done. Sherman opposed any restrictions on the new states, and reminded the Convention that many of the future leaders in the new states would be the descendants of the leaders in the old states, which was a correct prophecy.

Gouverneur Morris was the author of the provision which provided that no new state should be created out of any existing state without the consent of that state. The provision was aimed directly at the state of Franklin in western North Carolina, now Tennessee, which had sent William Cocke, later one of Tennessee's first United States Senators, to New York for the express purpose of obtaining recognition by the Continental Congress. Carroll and Luther Martin opposed Morris's proposal, and referred to the situations in Kentucky, then a part of Virginia; in the western section of North Carolina, now Tennessee; in Vermont, then an independent

republic, which position it occupied from 1777 until 1791, when it became a part of the Union. However, only New Jersey, Delaware, and Maryland supported Carroll and Martin, and the provision for receiving new states into the Union as originally proposed by Morris and as it now appears in the Constitution, was approved with only those three states opposing it.

Only Maryland opposed a resolution by Gouverneur Morris, which gave the government authority to make all rules and regulations affecting territories and property belonging to it.

The Convention had previously agreed to having the national government quell rebellions in any state on application of the state's legislature. It now modified this to permit such interference at the request of the governor if the legislature was not in session, to which only Massachusetts and Virginia objected.

Charles Pinckney was the author of a resolution which declared against any religious test being required of any public official, which only North Carolina opposed.<sup>1</sup>

Wilson wanted the Constitution to become effective when seven states had ratified it. Sherman suggested that the number be ten. Carroll wanted all the states to endorse it before it became effective, as had been the rule for amending the Articles of Confederation, but Maryland alone supported Carroll's motion. Randolph suggested nine states as the necessary number for ratification, which was finally agreed upon, though Virginia, North Carolina and South Carolina opposed it. The Convention voted to make it clear that only the states which ratified the Constitution would be subject to its provisions, which Maryland also opposed.

Gouverneur Morris next wanted to allow the states to determine their own manner of ratifying the Constitution. Wilson strongly urged the plan already accepted that the Constitution be submitted to conventions rather than to the state legislatures for consideration, since under the Constitution the state governments would lose some of their powers and the legislatures might therefore be less open-minded than the people in considering the new Constitution. Luther Martin wanted the Constitution submitted to the state legislatures,

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<sup>1</sup> Charles Cotesworth Pinckney has erroneously been credited with the authorship of this resolution.



but only Connecticut, Pennsylvania, Maryland, and Georgia voted to change from popular conventions to the legislatures, and the original plan was retained.

Randolph, Mason, and Gerry at this time all disclosed their growing dissatisfaction with certain phases of the Convention's proceedings, and opened the way for their refusal to sign the Constitution at the close of the Convention. The need for a second convention to consider objections to what had been done was again urged strongly by Mason and Randolph.

The grand committee to which had been referred sundry items in the Constitution dealing with ports of entry and duties on imports made its report through Sherman, of Connecticut. The report was approved without long debate; only New Hampshire and South Carolina voted against it.

It was then agreed to refer all postponed and unfinished items to a grand committee, consisting of Gilman, of New Hampshire; King, of Massachusetts; Sherman, of Connecticut; Brearly, of New Jersey; Gouverneur Morris, of Pennsylvania; Dickinson, of Delaware; Carroll, of Maryland; Madison, of Virginia; Williamson, of North Carolina; Butler, of South Carolina, and Baldwin, of Georgia. Brearly, one of the able men of the Convention, was named its chairman.

## VIII

### LAST DAYS

**T**HERE now remained only the working out of the last details of the Constitution, including the manner of electing the President, the signing of the Constitution, and the formal disbanding of the Convention.

When the Convention entered upon its closing days on September 3rd, it approved without debate plans for each state to give recognition to the public acts, records, and judicial proceedings of another state. Only the delegates from Connecticut opposed the plan for bankruptcy proceedings to be regulated by the national government.

Charles Pinckney at this period created somewhat of a commotion when he introduced a resolution which, if it had been adopted, would have made it impossible for a member of either branch of Congress directly or indirectly to receive any kind of salary for his public services. As he expressed it, like the Romans he "wanted the road to the temple of virtue to be the road to the temple of fame." Only North Carolina and Pennsylvania voted with him when the vote was taken on his resolution, but much debate was still precipitated over another portion of the Constitution which forbade a member of Congress from accepting a position or an increase in salary created by a session of Congress in which he had had a vote.

In its report on September 4th the committee on unfinished business submitted a number of items which were finally incorporated in the Constitution. Among them were the provisions stating the powers and duties of the President, the provisions in regard to the Vice-President, and the plan for the electoral college to choose the President. There was much concern over this new plan of election, which concern was voiced by Randolph and Charles Pinckney, whose plans were about to be cast aside. Gouverneur Morris acted as spokesman in explaining why the plan for choosing the President by Congress had been changed. He explained that fear had arisen that a Presi-

dent chosen by Congress would be too much its creature and subject to its influences, that such an official should be independent of Congress, and that it could always impeach him if the necessity arose. Gerry doubted the practical working of the plan, for it called for election by the Senate in the event no one secured a majority of votes in the electoral college, which would mean that in most cases the Senate would choose the President in the end. Gouverneur Morris urged that election by the Senate would make the President indebted to fewer individuals than would be the case if he were chosen by the House, but Wilson urged as strongly that the House of Representatives rather than the Senate make the final choice, and the matter was then postponed to the next day.

Gerry raised a protest on September 5th against a report of Bready's committee which permitted appropriations for a national army for a two-year period. He was against a standing army, which he declared dangerous to the people's liberties. The Convention again postponed that part of the committee's report which allowed bills for raising revenue to originate only in the House.

The Convention next resumed its discussion of the report of the committee on choosing the President. Charles Pinckney renewed his protest against the plan and declared a President chosen by the Senate would combine with the Senate in opposing the House. He also expressed a fear that a President eligible for re-election might strive to serve indefinitely. Rutledge moved to set aside the new plan and to approve the original one whereby the President would be chosen by both houses of Congress, serve seven years, and be ineligible for re-election, but only North Carolina and South Carolina sustained his motion. Wilson then moved to change from the Senate to the House of Representatives in case the Electoral College failed to elect, but his motion failed.

Gerry next suggested a fantastic plan for Congress to choose six Senators and seven Congressmen, who in turn would choose the President, but this was not considered at any length. A few further lesser amendments were proposed but rejected, and at the end of the day's discussion Mason stated that, now that the manner of electing the President was largely fixed, he "would prefer the government of Prussia" to what had been agreed upon.

King and Gerry on September 6th were the authors of the provision which prevents a Federal employee from serving as a Presidential elector.

Again the manner of electing the President took up most of the day. The provision still causing a warm debate was the one whereby the Senate should elect the President in the event no one received a majority in the electoral college. Wilson, who championed popular elections and disapproved the concentration of too much power in the Senate, warned the Convention against allowing the Senate to choose the President under any circumstances, for this would tend to make him its private puppet. He also predicted that the House of Representatives would be overpowered by a Senate with the powers it had already had bestowed upon it.

Gouverneur Morris inclined to agree, but reminded Wilson that the President had been given a large share in the treaty-making and appointive powers originally given to the Senate alone, which tended to reduce the Senate's power, and denied the danger of an aristocracy in the Senate. Hamilton, who had sat on the Convention floor for several weeks without a vote, also spoke in defense of allowing the Senate to choose, although he would also have been satisfied with having the electoral college elect the President by a mere plurality of its votes without a majority in favor of any one nominee.

Spaight and Williamson interposed a motion to make the President's term of office seven years, in which they received only the support of New Hampshire, Virginia, and North Carolina; a six-year term was also rejected; a proposal to make the term four years as it now stands was adopted with only North Carolina opposed to it.

All the states but North Carolina had supported the first plan to allow the Senate to choose the President in the event of a failure to elect by the electoral college. Williamson, of that state, now again suggested that the whole Congress vote instead of the Senate only when a President was to be chosen, and then by states only. But it was the mind and motion of Sherman which suggested the plan finally adopted and, with few modifications, now in use, whereby the House of Representatives chooses a President in the event of a failure to do so on the part of the electoral college. Only Delaware, New Jersey, and Maryland opposed the Sherman motion. On the

final vote, only North Carolina and South Carolina opposed the principle of the electoral system; North Carolina also wished a provision that the electors meet at the nation's capital, in which however none of the other states concurred.

Even so, while the states were thus in apparent substantial agreement in the manner of electing the President, it was plain that no one was thoroughly satisfied then, as no one is entirely satisfied today, with the plan as finally worked out. Many fanciful and cumbersome alternative proposals had been and were yet to be submitted, in many cases more than one by the same man, and we can only guess at some of the misgivings which must have remained in the delegates' minds as they reluctantly voted in favor of a compromise which embraced the entire idea of no one.

Randolph next was the author of that clause which gave Congress power to name the Presidential succession in the event of the death of both the President and Vice-President. Nearly one hundred years were to pass before such an act was passed by Congress, which it did after the death of Thomas A. Hendricks, of Indiana, who died as Vice-President during the first administration of Grover Cleveland.

The requirement that the President be at least thirty-five years of age and for fourteen years previous a resident of the United States, was unanimously adopted.

When the vote was taken for a Vice-President who would also preside over the Senate, New Jersey and Maryland took sides with Gerry, Williamson, and Mason, who had spoken against such a proposal. As fate would have it Gerry himself died while on his way to the Capital to be installed in that very office. Williamson and Mason opposed having any Vice-President at all.

The vote to allow the President to appoint ambassadors and judges as well as to fill vacancies during a recess of Congress was unanimous.

Much debate arose on Saturday, September 8th, over the plan to require a two-thirds vote of the Senate to assist the President in making treaties. Wilson interrupted with a motion that the House of Representatives as well as the Senate have a part in the making of treaties, but only Pennsylvania supported his motion. Madison and Butler wanted the Senate alone to have power to make a treaty of peace when two-thirds of its members supported such a plan; Butler

feared that otherwise there would not be sufficient restraint on an ambitious and warlike president. Maryland, South Carolina, and Georgia voted in favor of the Madison-Butler amendment. New Jersey, Pennsylvania, and Georgia opposed the plan for the President and two-thirds of the Senate to negotiate treaties, while Delaware was the solitary supporter of a plan of Wilson and Dayton to remove the provision requiring concurrence of two-thirds of the Senate to make a treaty.

Mason also again came forward with his plan for a privy-council of six to assist the President, to be elected by the Senate, two from each section of the country. This was wittily endorsed by Dr. Franklin, who thought such a council would prove a check on a bad president and a relief to a good one. Wilson and Dickinson also favored such a council, but Maryland, South Carolina, and Georgia were alone in supporting the Mason idea. New Hampshire alone voted against the provision requiring the President to call annually for reports from the heads of the several departments of the Government.

Charles Pinckney argued against allowing the Senate to act as a court in the impeachment of the President, for he feared the Senate might be politically prejudiced. Williamson, on the other hand, thought the Senate more likely to be too lenient and too much influenced by the President. Sherman, however, reminded the Convention that the President appointed the members of the Supreme Court and therefore that court should not be required to try the President. Pennsylvania stood alone in opposing the plan for impeachment of the President as finally adopted.

Pennsylvania and Virginia voted against requiring a two-thirds vote by the Senate to convict in cases of impeachment, but the two-thirds provision was finally adopted.

At this time also the power of the President to call Congress into extraordinary session was discussed, though not finally acted on, and the session adjourned for the day after appointing a committee to draft in final form the clauses of the Constitution so far definitely determined on by the Convention.

On September 8th the Convention resumed discussion of the con-

troversial issue centering about the provision that all bills for raising revenue should originate in the House of Representatives and be subject to amendment and alteration in the Senate. Maryland and Delaware only opposed such a plan on the final vote.

Monday, September 10th, was an eventful day in the Convention. Gerry moved for a reconsideration of a previously adopted plan whereby two-thirds of the state legislatures could compel Congress to call a Constitutional Convention. Hamilton joined Gerry in his motion, but for a different reason. Hamilton favored an easy method of changing the Constitution and frankly said the people in the end would decide the issues at stake, regardless of the form of government then adopted. Only New Jersey opposed Gerry's motion to reconsider.

Wilson then became the author of a motion unanimously adopted requiring the approval of three-fourths of all the states to any amendment before it became effective.

Madison, seconded by Hamilton, then submitted the complete plan for amending the Constitution as we have it today, requiring the vote of two-thirds of both houses of Congress and three-fourths of all the states before an amendment becomes effective, the latter part of the motion including the substance of Wilson's motion which had just been acted on. Delaware was alone in disapproving the Madison-Hamilton motion.

Rutledge also rose to bring the already much-debated slavery issue into the discussion of the power to amend by offering an amendment, which was adopted, making it impossible to amend that provision of the Constitution which allowed the importation of slaves until 1808.

It next was apparent that the question of how the Constitution was to be amended was also intimately associated in the minds of the delegates with the question of the manner in which the Constitution was to be ratified.

Gerry opened the subject, in which Hamilton joined, asking that the Constitution be submitted to the Continental Congress. It had at first voted that this would not be done, for it had seemed inconsistent, according to Fitzsimmons, to have Congress vote its own death sentence, but Gerry felt that the Congress which had called the Convention should have the work of the Convention submitted to it.

Edmund Randolph next announced for the first time his dissatis-

faction with the proposed Constitution because it made no provision for the states to offer amendments to it, at or immediately after its adoption, and argued for a second general convention at which amendments could be submitted by the states.

King wished to submit the Constitution to Congress before submission to the states, but without any opportunity for Congress to act either for or against the document. Hamilton, on the other hand, wanted Congress to approve the Constitution before submitting it to the states, in which Gerry concurred. Wilson opposed the Hamilton-Gerry proposal, Clymer, King, and Rutledge all agreed with Wilson, and only Connecticut supported the plan of Hamilton when the vote was taken. Instead, at the suggestion of Williamson and Gerry, the Convention later voted to re-insert the words "for the approbation of Congress" in the letter to Congress reporting on its activities.

Randolph again discussed his objections to the Constitution. He expressed his disapproval of the Senate's acting as a court of impeachment, of the power of Congress to override a presidential vote by a two-thirds vote, of the small number of Congressmen provided for, of an unlimited national army, and finally, his opposition to the Constitution unless provision was made in the Constitution for another general convention. He offered a resolution calling for such a second convention which was seconded by Franklin, but at Mason's request the Randolph resolution was allowed to lie on the table.

The convention lost one day (September 11th) waiting for the report of the committee on style and revision to which the Constitution had been submitted. When it next met on September 12th, Dr. Johnson, the chairman of that committee, reported a digest of the plan for a Constitution and also the draft of a letter which the Convention had directed be sent to the Congress with the completed instrument. The full text of this letter as finally sent appears at the end of the next chapter.

Williamson, who was the author of the plan for a three-fourths vote of Congress to override the veto of the President, now moved that his own plan be changed from a three-fourths to a two-thirds vote of Congress. He was supported in his plea by Sherman, Hamilton, and Charles Pinckney. Although his motion prevailed by a



vote of six to four states, General Washington, Blair, and Madison, of Virginia, all opposed the change.

Williamson then again came forward and asked for juries in civil cases. Gerry aided him in his plea and called for a committee to prepare an entire bill of rights, which was seconded by Mason, the author of Virginia's bill of rights. The vote of the Convention on Gerry's motion was tied and lost.

Mason then made a plea for the states to lay an expense tax on goods to be exported, which evoked much debate but was adopted. Mason was supported by Madison, Gouverneur Morris and Fitzsimmons.

Mason, seconded by Johnson, also advocated the appointment of a committee for encouraging economy, frugality, and use of American manufactures, and discussed the extravagance of the times and the excessive use of foreign made goods. His motion carried, and Mason, Johnson, Franklin, Dickinson, and Livingston were named to the committee, which however made no report before the Convention adjourned. Mason also introduced another last-minute motion requiring that navigation acts be passed by a two-thirds majority, at least until 1808, but this failed, being supported only by Maryland, Virginia, and Georgia.

Randolph was the author of the motion which removed from the Constitution the word "servitude," thereby removing any direct reference to slavery in the Constitution.

Rutledge and Gouverneur Morris wanted all impeached persons to be automatically suspended from office until their trial was over. Connecticut, South Carolina and Georgia were alone in supporting such a motion after Madison had shown the injustice of it.

Much time was spent during the closing hours of the Convention in correcting the phraseology of the proposed Constitution. Madison and Charles Pinckney wanted to give Congress power to establish a university with complete religious freedom, which was defeated as unnecessary since Congress had exclusive power to do as it pleased at the seat of government.<sup>1</sup>

Virginia and Georgia stood alone in supporting a motion made by

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<sup>1</sup> Howard University for Negroes is today the only higher educational institution in Washington supported by government funds.

Mason, supported by Randolph and Madison, which referred to the dangers of a peace-time army to the liberties of the people.

Charles Pinckney and Gerry advocated a declaration that the liberty of the press shall be kept inviolate, a motion which was supported only by the votes of Massachusetts, Maryland, Virginia, and South Carolina.

The Convention adopted a provision guarding against the government showing any advantage to one American port over another. Much argument also again arose over the question of the right of a state to lay a duty on tonnage without the consent of Congress, which privilege was denied by a vote of six to four.

Pennsylvania, Delaware, Maryland, and Virginia alone supported Carroll's motion that the Convention prepare an address to the people when the Constitution was submitted to Congress.

Another argument arose again during the last hours of the Convention over increasing the number of Congressmen. Williamson's motion on the subject was of anxious interest to many, but when Langdon wanted to give Rhode Island two instead of one Congressman, King threatened not to sign the Constitution if this was done, and the motion failed.

Gouverneur Morris and Gerry were the authors of the provision for Congress to submit constitutional amendments to the states when so requested by two-thirds of the states.

Gouverneur Morris was also the author of the provision in the Constitution which provided that no state, without its consent, shall be deprived of its equal suffrage in the Senate, a provision which in effect guaranteed forever the equal representation in the Senate of all the states of the Union.

Randolph again made an effort to have the Constitution provide for a second convention to consider amendments proposed by the states. He was again supported by Mason, who predicted that the government under the Constitution would end in either monarchy or a tyrannical autocracy. He reminded the Convention that the Constitution had been formed without the knowledge or the mandate of the people, and repeated his unwillingness to sign what he could not approve. Charles Pinckney also spoke his objections to the Constitution, but declared a second general convention to be practically

impossible. Gerry also enumerated his objections to the Constitution in detail, which a second convention might rectify. However, the states voted unanimously against Randolph's motion for a second convention.

The states then voted unanimously in favor of agreeing to the Constitution they had laboriously completed. That was on Saturday, September 15, 1787.

## IX

### SIGNING THE DOCUMENT

WHEN the Convention convened for its last day's session on Monday, September 17, 1787, there was little left but the signing. But even this apparent formality was to be fraught with possibilities, for the task, to the plain view of those present, weighed heavily on the consciences of many. Governor Randolph, of Virginia, the redoubtable Mason, and Gerry had announced only a few days before that they definitely would not sign, and others were known to be still uncertain.

The first act of the day was the final reading of the engrossed copy of the Constitution. Thereafter the grave and world-eminent sage of the Convention, Dr. Franklin, rose with the following written speech in his hand, which his friend Wilson read to the delegates:

"Mr. President: I confess that there are several parts of the Constitution which I do not at present approve, but I am not sure I shall never approve them. For having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is therefore that the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them it is so far error. Steele, a Protestant, in a dedication, tells the Pope that the only difference between our churches in their opinions of the certainty of their doctrines is 'the Church of Rome is infallible, and the Church of England is never in the wrong.' But though many private persons think almost as highly of their own infallibility as of that of their sect, few persons express it so naturally as a certain French lady, who in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself that is always in the right—il n'y a que moi qui a toujours raison.'

"In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution. For, when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting in our favor among foreign nations, as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion—on the general opinion of the goodness of the government, as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

"On the whole, sir, I cannot help expressing a wish that every member of the Convention, who may still have objections to it,



SIGNING THE CONSTITUTION



would with me, on this occasion, doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument."

He was, to the end, the great conciliator of the Convention.

Dr. Franklin then introduced a resolution, shrewdly drawn by Gouverneur Morris and given to his venerable friend to introduce, that the proposed Constitution be signed by all the delegates present in the following "convenient form:"

"Done in Convention by the unanimous consent of the states present, the 17th of September, etc. In witness whereof, we have hereunto subscribed our names."

Franklin's motion was seconded and discussion of it began, but Gorham interrupted the discussion in a last effort for the Convention to decrease the number of inhabitants for one Congressman from 40,000 to 30,000, in which he was seconded by King and Carroll. General Washington, the chairman, arose for the purpose of putting the question and spoke briefly in favor of the Gorham motion. It was his first, last, and only request of the Convention, and it was granted unanimously.

Randolph now again expressed his sorrow at his inability to sign the Constitution, though he also stated that he kept himself free to be governed in the future by his duty as he saw it.

Gouverneur Morris replied by saying he, too, had objections, but the majority had spoken and he would abide by its decision. As he saw it, there must be a general government or anarchy.

There were some, however, for whom the question was complicated rather than simplified by Dr. Franklin's ambiguous resolution, though in the end some signed who would not have done so without it, as Gouverneur Morris had intended. True, the resolution stated that the Constitution was approved by the "unanimous consent of the states present," but would not the act of signing "in witness thereof" also indicate that the individual signers each personally approved the document as drawn? Williamson thought so, and suggested that it would be less difficult for those who objected to the Constitution if they were only asked to sign a letter of transmittal to the Continental Congress, although he for one intended to sign the Constitution itself.



Hamilton frankly said to this that no man's ideas were more remote from the plan adopted than his own were known to be, but was it possible, he asked, to deliberate between anarchy and convulsion on one side and the chance of good to be expected from the plan on the other?

Blount was apparently the first to be won over. He announced he would sign, though he had previously declared he would not do so, for, he said, the Franklin motion opened the way for him. Dr. Franklin then expressed the hope that Randolph would also sign in view of the form of his resolution, but Randolph felt that signing in the form proposed still amounted to tacit approval of the Constitution, and this he had already declared against. Gerry intimated his fear of a civil war in the United States, especially in Massachusetts, in the event the Constitution was ratified.

Charles Cotesworth Pinckney, in keeping with his fame for fairness, also regretted the ambiguity of Franklin's resolution, though he intended to sign because he approved the Constitution as it stood. Ingersoll, a great lawyer, stated, too, that he thought the signing of the Constitution would amount to a recommendation thereof to the Continental Congress, which many could not conscientiously do.

All the states finally approved the Franklin motion except South Carolina, where the vote was divided, Charles Cotesworth Pinckney and Pierce Butler still opposing it in the form presented.

This important business completed, Wilson moved to deliver to Washington, the President of the Convention, the journals and other papers of the Convention, and that he keep them subject to the orders of Congress. The motion carried with only Maryland in opposition, and pursuant thereto Washington retained them including the signed copy of the Constitution itself until he turned them over to the Secretary of State eight and one-half years later.

The last step had now been reached. The members of the Convention came forward in groups from each state, led by Washington, beginning with New Hampshire and ending with Georgia, and affixed their names to the engrossed Constitution, Hamilton writing with his quill pen the names of the respective states on the engrossed instrument before him. In the end only Randolph, Mason, and Gerry of all those present refused to sign.

As the Convention came to a close, Dr. Franklin, whose wise counsel had been of invaluable aid, looked toward the President's chair, at the back of which a sun at the horizon had been painted, and remarked to those near him that painters had found it difficult to distinguish in their art a rising sun from a setting sun. "I have," said he, "often and often in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that sun behind the President, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know it is a rising and not a setting sun."<sup>1</sup>

The Convention then adjourned *sine die*, and the delegates gathered for a final dinner at the Queen's Tavern before they departed to their several homes to await the verdict of the people on the question of ratifying what they had done, and to find themselves enrolled among the solons of all time.

Before the diners had gathered, however, fast messengers were on their way to New York bearing copies of the proposed Constitution and the letters of the Convention to the Continental Congress. Soon the New York and Philadelphia papers bore the full text of the Constitution to the waiting world, and therewith the citizens of the nation had their first glimpse of how their future national government would be conducted. The pledge of secrecy by the members of the Convention had been well kept, and there had been no advance notice of the contents of the Constitution.

The letter of the Convention to the Continental Congress accompanying the Constitution read as follows:

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<sup>1</sup> The one hundredth anniversary of the signing of the Constitution was a notable anniversary in the history of the nation. Grover Cleveland, President of the United States, and many of the great leaders of Pennsylvania and the nation took part in the historical ceremonies held in Philadelphia on September 17, 1887. Calling to mind the prophetic address of Franklin at the close of the Constitutional Convention, a commemorative ode was written, the closing words of which were:

*"America, thy sun has not set,  
But shall forever shine;  
Ages upon ages yet,  
America, are thine."*

Committees were appointed by the Vice-President and the Speaker of the House of Representatives in 1936 to arrange for the Sesqui-Centennial Celebration in 1937.

"We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

"The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce; and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Thence, results the necessity of a different organization. It is obviously impracticable, in the Federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances, as on the objects to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved. And on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

*"In all our deliberations on this subject, we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our Union in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid in points of inferior magnitude than might have been otherwise expected. And thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable."*<sup>2</sup>

"That it will meet the full and entire approbation of every state is not, perhaps, to be expected. But each will doubtless consider, that, had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

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<sup>2</sup> Italics are the work of this author.

Ten days later, on September 28th, without comment for or against its adoption, Congress submitted the proposed Constitution to the several state legislatures for submission to conventions to be called in each state to act upon its ratification.

## CONSTITUTION OF THE UNITED STATES

AS AMENDED AND ADOPTED IN CONVENTION, SEPTEMBER 17, 1787

*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution of the United States.<sup>3</sup>*

### ARTICLE I

Sect. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massa-

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<sup>3</sup> Italics at this author's suggestion.

chusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year; so that one-third may be chosen every second year. And, if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party

convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sect. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a small number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings; punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journals.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Sect. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsiderations, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each House, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress shall have power,

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land or water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof.

Sect. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.



The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II

Sect. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term

of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and, if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and, if no person have a majority, then from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice-President. But, if there should remain two or more who have equal votes, the Senate shall choose from them by ballot, the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In the case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Sec. 2. The President shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officers in each of the executive departments, upon any subject relating to the duties of the respective offices. And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of each inferior officer as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

Sect. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Sect. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III

Sect. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, or consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any

State, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on the confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

#### ARTICLE IV

Sect. 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sect. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Sect. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

#### ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments; which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

#### ARTICLE VI

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby; anything in the constitution or laws of any State to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office of public trust under the United States.

#### ARTICLE VII

The ratification of the conventions of nine States shall be suffi-

cient for the establishment of this constitution between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, President and Deputy from  
Virginia.

*New Hampshire*

John Langdon  
Nicholas Gilman

*Connecticut*

William Samuel Johnson  
Roger Sherman

*Pennsylvania*

Benjamin Franklin  
Thomas Mifflin  
Robert Morris  
George Clymer  
Thomas Fitzsimmons  
Jared Ingersoll  
James Wilson  
Gouverneur Morris

*Maryland*

James McHenry  
Daniel of St. Thos. Jenifer  
Daniel Carroll

*North Carolina*

William Blount  
Richard Dobbs Spaight  
Hugh Williamson

*Georgia*

William Few  
Abraham Baldwin

*Massachusetts*

Nathaniel Gorham  
Rufus King

*New York*

Alexander Hamilton

*New Jersey*

William Livingston  
David Brearly  
William Paterson  
Jonathan Dayton

*Delaware*

George Read  
Gunning Bedford, Jr.  
John Dickinson  
Richard Bassett  
Jacob Broom

*Virginia*

John Blair  
James Madison, Jr.

*South Carolina*

John Rutledge  
Charles C. Pinckney  
Charles Pinckney  
Pierce Butler

Attest, William Jackson, Secretary.

## X

### THE FIGHT FOR RATIFICATION

**T**HE Constitutional Convention had overstepped its bounds in writing a new Constitution. The call for it issued by the Congress had specified only the proposal of changes in the Articles of Confederation then in effect; the credentials of all the delegates as given them by their various state legislatures, save only of those from New Jersey, had also specified no more.

When the Convention adjourned its members knew their work had been good. But they were fearful what the result would be if the Constitution were submitted to either the Congress or to their state legislatures. They had accordingly specified that it be submitted for approval to conventions specially elected for the purpose by the people, and not to the state legislatures. Some had counselled against referring the document to the Congress for fear of what it might do, and perhaps others had feared also that the state legislatures might refuse to call the necessary popular conventions.

As it turned out the fears of these men were not groundless, for a number of members of the Continental Congress at once denounced their work in no uncertain terms. Several insisted that, before the Constitution be submitted to the people, vital amendments were essential, though in the end no changes were made; Richard Henry Lee, of Virginia, objected especially to the unlimited power of taxation granted the Federal Congress, to the extensive powers granted the Federal Courts, and to the absence of a bill of rights. When after eight days the Congress, on September 28, 1787, submitted the Constitution to the state legislatures with the proposal that the specified conventions be called, it did so without any comment either for or against the proposed Constitution. The minutes of the Congress for that day were as follows:



"The United States, in Congress assembled Friday, September 28th, 1787. Present, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia; and from Maryland, Mr. Ross.

"Congress having received the report of the convention lately assembled in Philadelphia;

"RESOLVED, UNANIMOUSLY, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures in order to submit to a convention of delegates, chosen in each State by the people thereof, in conformity to the resolves of the convention, made and provided in that case.

"Charles Thomson, Secretary."

From this point on the story of the Constitution becomes a series of thirteen local stories, each with its own drama. That story is told in detail in Part III of this book, in the short introductory story of affairs and events in each state which introduces the sketches of The Makers of the Constitution.

Nevertheless a few summary facts and conclusions of a general nature can be given.

Nowadays it would appear not only highly proper but entirely feasible to submit such a subject as a new national constitution to the people by means of a national referendum. But in 1787 such a thing as a popular referendum was unknown: the accepted method, as developed in America, was for the people to choose wise men more skilled than they in affairs of state, who should gather, carefully weigh and discuss, and then determine what was wisest for their constituents.

Nevertheless a popular campaign was necessary, for if the people were to elect delegates, they would tend to choose men in favor of their own views. Newspaper and speaking campaigns had to be organized, both for and against the new Constitution. In a sense, then, the real struggle for the new Constitution had only begun: first the people had to be convinced, then their representatives in thirteen separate conventions would have to be won over, if necessary.

Both sides prepared for the campaign, with separate lines of attack in every state. Certain states were considered key states: in those

the campaigns were most hotly waged. In certain states special publicity devices had to be invented by both sides: where necessary, this was done.

The best advocates for the Constitution in each state were of course the men from that state who had helped make and had signed the Constitution, and in general, these men carried the brunt of the attack.

To aid them, they were furnished with campaign literature. The most famous of this literature has come since to be known collectively as *The Federalist*, a series of eighty-six papers so clearly, brilliantly, and learnedly written on every detail in the Constitution that they are still referred to constantly to determine its true meaning. They were written entirely by three men, fifty-one by Alexander Hamilton, of New York; twenty-nine by James Madison, of Virginia; six by John Jay, of New York. Jay had not been to Philadelphia, but from his friend Hamilton he quickly absorbed the essential points in the new scheme.

Against the Constitution another group was formed, which had its headquarters in New York, and was directed by the faction of Governor Clinton in that state, aided by Robert Yates and John Lansing, the two out of the three New York delegates at Philadelphia who had been out of sympathy with the work of the Convention and had left it only six weeks after it had opened and over two months before it had finished its business. Joseph Bryan, of Philadelphia, and Richard Henry Lee attempted to answer the arguments of *The Federalist* in a series of counter-writings which are little known today; Lee's articles appeared under the pen name of "Letters from a Federal Farmer."

The framers of the Constitution had judged rightly when they anticipated that the people would be more likely to approve the Constitution than the politicians in the state capitals. But even so they left no stone unturned, and in Pennsylvania the state convention was called so hastily that almost more harm was done than good. The voters at the polls resented the attempt to "railroad" the Constitution through, and only James Wilson of all the eight Pennsylvania delegates at the Philadelphia Convention was elected to the state ratification convention: the venerable Benjamin Franklin being

defeated. The plan must have been at least partially successful, however, for the opponents of ratification insisted throughout the convention that only about twenty percent of the eligible voters in the state had actually voted because of the haste with which the election of delegates had been held, and that if more had had a chance to come to the polls the result would have been overwhelmingly against ratification. In support of that claim they could point to Rhode Island, where an exception was made and a popular referendum was held (followed later by another popular vote in which delegates to a convention were elected): the voters of Rhode Island having voted almost eleven to one against ratification in their first vote on the subject.

But the popular vote the country over did not necessarily bear out such a contention. Exact figures have never been available, but it appears that out of approximately 150,000 popular votes cast all over the country about 100,000 favored ratification and 50,000 opposed it.

Whether the vote of this 150,000 accurately represented the opinion of the entire country can no longer be determined, though an analysis of the methods of making up the electorate in those days might indicate that it did not. The population of all the thirteen colonies in 1787 was in the neighborhood of 3,000,000, but at that date by no means all of even the free adult males had the vote. Every state in those days imposed one sort or another of more or less severe qualifications for voting: some required proof of ownership of property, some required that the property be land, others that the voter be able to read or write or both, all had citizenship and residence requirements. Needless to observe, in a country as young as America was then, with many immigrants only recently arrived, comparatively few of the free adult male population were qualified to vote.

The groupings for and against ratification were many, but fundamentally simple when the problems which faced the new nation are kept in mind. In the end men cast their votes as their own "enlightened self-interest" dictated, and the lines of cleavage followed quite closely the economic situations in which the voters of that day found themselves.

Geographically, the simplest difference was expressed between East and West, between seaboard and hinterland. The stable, commercial, and already considerably industrialized cities along the seaboard were strongly for ratification; the backwoods regions, mostly of small farms, many of them heavily mortgaged to men in the seaboard cities, clamoring for "cheap" money and democratically hostile to the "airs" assumed by seaboard "aristocrats," opposed ratification. In New Hampshire only the well-populated but short seacoast region in the southeastern corner of the state and the older Connecticut Valley settlements strongly favored ratification.

In Massachusetts the vote was almost evenly divided between the eastern part, which was 73% in favor of ratification, and the western region: in the middle region where Shays' Rebellion had just been put down it was 86% opposed, in the far western region it was 58% opposed, and Maine (then a part of Massachusetts) was also opposed. In staid, wealthy, conservative Connecticut, already comparatively densely populated, there was little opposition. In Rhode Island, where the more turbulent elements were in the saddle, the first vote was heavily against ratification.

In New York the division between up-state and down-state, between Albany and New York City, was clear-cut against and for ratification. In Pennsylvania again it was Philadelphia and the seaboard against the country counties sprawling across the Alleghenies. New Jersey, Delaware and Maryland, with all three of them the victims of the selfish commercial laws of the adjoining states, strongly favored ratification.

In Virginia the rich tidewater and Shenandoah Valley regions were from 80% to as high as 97% for ratification, with the highest percentages in the Scotch-Irish and German communities in what is now West Virginia, while the Piedmont, the mountain, and the sparsely populated Kentucky regions were overwhelmingly against ratification, except in Jefferson County, Kentucky, in which is now the city of Louisville, which favored ratification. In North Carolina the isolated farmers were generally indifferent in the first vote, though ultimately the seaboard region in the second vote was won over as against the more radically minded men of Tennessee. In South Carolina the commercial and rich planter seaboard regions were 88%

for ratification; the middle region was only 51% opposed, but the upper sections were 80% opposed.

The great exception was in Georgia, which was almost unanimously for ratification in all its parts, although it was the youngest state of all and immigration had really only just begun. The reason was simple, and is to be found in its "foreign affairs:" on the west were the very strong and hostile Cherokee tribes, on the south were the Spanish Floridas, who more often than not were hand-in-glove against the Yankee settlers, particularly as there was a dispute as to the boundary between Georgia and the Floridas which made a full hundred-mile strip between the two a veritable "no-man's land." A strong central government could do more for Georgia in these matters than Georgia could do for herself.

To summarize, the major groups in the country for ratification were the following:

(1) Forward-looking men who were alive to the need for a strong national government if the country was to develop to its fullest possibilities;

(2) The wealthy and commercial classes, who knew the need for national economic stability;

(3) Those who felt keenly the all but discredited position of the new nation, with its internal discord, and state and national debts all but repudiated at home and abroad, and the need for a restored credit commerce and confidence.

The opposition included:

(1) The extreme states'-rights elements, who were jealous of a super-government;

(2) The local state political leaders, who envisioned the eclipse of their own public leadership;

(3) Those who felt that a national government restricted individual liberty;

(4) Principally and in greatest numbers, the debtor element, which opposed the payment of debts whether personal, state, or national, and who saw in the doom of paper money and in the enforcement of contracts not only the end of loose business, but a stability which would injure the debtor and benefit the creditor class;

(5) Those who feared the absence from the Constitution of a bill of rights, which was a vital objection.

In addition to these general lines of division, certain further local issues also made for peculiar divergencies of sentiment. Thus the Scotch-Irish in the Connecticut Valley opposed ratification, while the small non-slave-owning Scotch-Irish farmers in the Shenandoah Valley voted with their local German neighbors overwhelmingly in favor of ratification; in Pennsylvania the Quaker and German elements also favored ratification, while on the other hand the German farmers of central North Carolina who had immigrated from Pennsylvania were at first apathetic and voted against ratification. In Boston it was notable how many lawyers and ministers supported ratification, though as to the latter class the tacit recognition of slavery in the Constitution was a bitter pill, and some openly said so.

States like Connecticut, New Jersey, Delaware, and Maryland, who shipped wood and farm products to the large cities of New York and Philadelphia, looked forward to abolition of state tariff barriers. On the other hand, in New York the port authorities feared for the resulting loss of revenue, while the large up-state land-owners feared the increased competition for the city market from the adjoining states, as also heavy Federal land taxes. In opposition to agricultural up-state New York, however, six counties in and about New York City felt so strongly on the subject that the threat was made that they would secede from the rest of the state if the state as a whole did not vote for ratification: Dutchess County was two-to-one for ratification; the leaders in Queens and Suffolk Counties, on the other hand, were only won over at the last by a close margin.

In Maryland a strong Tory group, left-over of the war, favored the promised strong central government, and in combination with the mercantile element they swamped the small but vocal paper-money group. Its rural elements were largely indifferent on the subject.

In the South the large slave-owners were in general in favor of the Constitution. Most of them were satisfied that slavery, without which they felt they could not exist, had been sufficiently protected by the Constitution, though a few high-minded idealists like Mason, who was one of the country's largest slave-owners himself, were incensed that the whole institution of slavery and the execrable traffic

in slaves had not been abolished thereby. If the large slave-owners objected to the Constitution it was chiefly because their training had made them in principle rigid individualists, and they resented any form of strong governmental supervision or domination. On the other hand, the non-slave-owning backwoods groups, who were led by such fiery-tongued individualists as Patrick Henry, were on principle opposed to anything the slave-owning gentry of the state might propose. And there were many such in Virginia, for it would seem that at the time hardly more than a third of the population of the state was slave.

In Virginia there was also a noticeable division along religious lines. The "first families" of the state were largely Episcopalians, accustomed to a central church allied with the state: the Presbyterian and Baptist ministers, who opposed any form of state church, were strong for the new Constitution.

As after every war, also, there was the question of the remuneration for services rendered by the soldiers of the Revolution. They had been paid either in Continental Currency, promises to pay in the future, or in western land-grants. All of these had shrunk to nothing in value and were drugs on the market: Washington himself had had to sell the right to his promised pay for a fraction of its face value. These men were anxious to get their just dues, though they resented that the speculators who had bought their certificates for almost nothing would probably be made rich by the new Federal Government long before they themselves would get any consideration from it.

Far across the mountains also, in Kentucky, General James Wilkinson,<sup>1</sup> who for almost a generation drew pay both as a trusted American army officer and commandant, and as the secret agent of Spain for the purpose of obtaining secession of the West, was little favorable to what was going on. Only the year before, while the Constitutional Convention was sitting, he had entertained Spanish envoys and had again discussed with them the old topic of encouraging Tennessee and Kentucky in the establishment of an independent republic, and of adding the entire eastern Mississippi Basin

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<sup>1</sup> Wilkinson was the founder of Frankfort, the capital city of Kentucky. A street there bears his name.

to New Orleans and Louisiana. Now, as a stronger national government promised to become a reality, he could see his plans go glimmering, though he continued regularly to draw his Spanish pay for many years thereafter.

There were many also in all parts of the country who objected to and were suspicious of the secrecy with which the Constitution had been made. As to this, it can only be said that as a practical matter it was perhaps as well that the Convention had met behind closed doors and had not published the daily course of its deliberations. If the home folks had been allowed to make constant suggestions or had been advised of the often wide divergences of opinion which existed at times on the Convention floor it is probable that their pressure would have resulted in breaking up the Convention. As it was, at the very time in which the Convention was close to breaking up of its own accord, before its major compromises had been reached, a Philadelphia paper which only knew by rumor what was going on behind its closed doors referred to the meeting place of the Convention as the "Hall of Unanimity."

But New Hampshire, the ninth state to ratify, did so in convention on June 21, 1788, and from that day the Federal Constitution became the supreme law of the land. New Hampshire's delegates at its ratification convention did not know the full import of their act till later, for the eighth state had been South Carolina, far to the south, and news traveled slowly in those days. But Hamilton's messenger from the north met Madison's from the south at Gadsby's Tavern at Alexandria, Virginia, one week later and when the two had exchanged the news they bore, the town became at once the scene of the first impromptu celebration in honor of the event. And it was fitting that it should be so, for only two years before, in the same tavern in the same town, the first conference had been held which led to the calling of the momentous Constitutional Convention at Philadelphia.

On July 2, 1788, less than ten months after the Constitution was submitted to the states, the Continental Congress officially announced that the Constitution was in effect; Virginia, the tenth state, had also ratified in the meantime. On the day of the announcement all the thirteen states save Rhode Island were represented by the



twenty-four delegates on the floor of the Congress. Baldwin and Few, of Georgia; Gilman, of New Hampshire, and Dayton, of New Jersey, all of whom had signed the Constitution less than a year before, were on the committee appointed officially to prepare the announcement. It was signed by Charles Thomson, Secretary of the Continental Congress.

Once the Constitution was officially adopted, its friends saw to it that the event was suitably celebrated. In New York City the chief celebration was held as soon as its state convention had ratified as the eleventh state on July 26th; proudly and triumphantly the "Ship of State" in miniature was drawn through the streets, and at its masthead fluttered a banner with the name of Alexander Hamilton on it. In Philadelphia the celebration was combined with the regular July 4th festivities. Ten vessels, representing the states which had so far ratified, were anchored in the harbor with flags flying, ten horses drew a carriage through the streets bearing the proud label "Constitution," and ten carrier pigeons bearing the ode of the day were released to the ten states which were already a part of the new Union. James Wilson, who had had such an important part in drafting the new Constitution, was the orator of the day and rejoiced with his happy audience in the success of his great handiwork.

In the more remote parts of the country the enthusiasm was more restrained, and in the country district the news was probably greeted, more often than not, by the isolated farmers with comparative indifference. One exception was in the town of four hundred souls at remote Pittsburgh: it had been the only inland community in Pennsylvania to favor ratification (its inhabitants were already prospering under the steady streams of trade which were moving over the mountains from the east and down the Ohio to the west, and back to the east from the west by the same route), and now they built a great bonfire with genuine brimstone in it and enthusiastically burned in effigy the recalcitrant state of Rhode Island. A few years later President Washington would have to send militiamen from Virginia, Maryland, New Jersey and Pennsylvania under the leadership of "Light Horse" Harry Lee, then Governor of Virginia, to put down the Whiskey Rebellion, the first armed resistance to the authority of

the new government, in the counties only a few miles from Pittsburgh, one of which bore the name of Washington. At Harrisburg, Pennsylvania, a convention assembled and proposed a series of amendments to the Constitution.

But in general the forces in opposition took defeat gracefully and there were no untoward outbreaks. Further meetings of the sort which met at Harrisburg soon ceased when it was learned that the new Congress would of its own motion submit amendments to the Constitution to the state legislatures.

That fall eleven states held their elections for the new Federal Government in good order, and on April 30, 1789, George Washington was formally sworn into office as President. Rhode Island, the last state, finally ratified on May 29, 1790, though not until Congress, by tariffs and otherwise, had threatened to treat it and North Carolina, the twelfth state to ratify, virtually as foreign nations. Therewith ended what John Marshall, the great Chief Justice of the United States Supreme Court, once called "the Great Revolution."

## LIST OF THE MEMBERS

OF THE FEDERAL CONVENTION WHICH FRAMED THE CONSTITUTION  
OF THE UNITED STATES

<i>From</i>		<i>Attended</i>
New Hampshire	1. John Langdon .....	July 23, 1787
	* John Pickering	
	✓ 2. Nicholas Gilman .....	July 23, "
	* Benjamin West	
Massachusetts	* Francis Dana	
	Elbridge Gerry .....	May 29, "
	✓ 3. Nathaniel Gorham .....	May 28, "
	4. Rufus King .....	May 25, "
	Caleb Strong .....	May 28, "
Rhode Island	No appointment	
Connecticut	✓ 5. William Samuel Johnson .....	June 2, "
	✓ 6. Roger Sherman .....	May 30, "
	Oliver Ellsworth .....	May 29, "
New York	Robert Yates .....	May 25, "
	✧ 7. Alexander Hamilton .....	May 25, "
	John Lansing .....	June 2, "

<i>From</i>		<i>Attended</i>
New Jersey	↓ 8. William Livingston .....	June 5, “
	↓ 9. David Brearly .....	May 25, “
New Jersey	William C. Houston .....	May 25, 1787
↖	10. William Paterson .....	May 25, “
	* John Nielson	
	* Abraham Clark	
	↓ 11. Jonathan Dayton .....	June 21, “
Pennsylvania	↖ 12. Benjamin Franklin .....	May 28, “
	↓ 13. Thomas Mifflin .....	May 28, “
	14. Robert Morris .....	May 25, “
	↖ 15. George Clymer .....	May 28, “
	↖ 16. Thomas Fitzsimmons .....	May 25, “
	↖ 17. Jared Ingersoll .....	May 28, “
	↖ 18. James Wilson .....	May 25, “
	19. Gouverneur Morris .....	May 25, “
Delaware	↖ 20. George Read .....	May 25, “
	↖ 21. Gunning Bedford, Jr. ....	May 28, “
	↓ 22. John Dickinson .....	May 28, “
	↓ 23. Richard Bassett .....	May 25, “
	↓ 24. Jacob Broom .....	May 25, “
Maryland	↖ 25. James McHenry .....	May 29, “
	↖ 26. Daniel of St. Thomas Jenifer ...	June 2, “
	↖ 27. Daniel Carroll .....	July 9, “
	John Francis Mercer .....	Aug. 6, “
	Luther Martin .....	June 9, “
Virginia	↖ 28. George Washington .....	May 25, “
	* Patrick Henry (declined)	
	Edmund Randolph .....	May 25, “
	↓ 29. John Blair .....	May 25, “
	30. James Madison, Jr. ....	May 25, “
	George Mason .....	May 25, “
	George Wythe .....	May 25, “
	James McClurg (in place of P. Henry) .....	May 25, “
North Carolina	* Richard Caswell (resigned)	
	Alexander Martin .....	May 25, “
	William R. Davie .....	May 25, “

<i>From</i>		<i>Attended</i>
	31. William Blount (in place of R. Caswell) . . . . .	June 20, “
	* Willie Jones (declined)	
North Carolina	32. Richard D. Spaight . . . . .	May 25, 1787
	33. Hugh Williamson (in place of W. Jones) . . . . .	May 25, “
South Carolina	34. John Rutledge . . . . .	May 25, “
	35. Charles C. Pinckney . . . . .	May 25, “
	36. Charles Pinckney . . . . .	May 25, “
	37. Pierce Butler . . . . .	May 25, “
Georgia	38. William Few . . . . .	May 25, “
	39. Abraham Baldwin . . . . .	June 11, “
	* George Walton . . . . .	May 31, “
	William Houstoun . . . . .	June 1, “
	* Nathaniel Pendleton	

Those with numbers before their names signed the Constitution . . . . .	39
Those marked (*) never attended . . . . .	10
Members who attended, but did not sign the Constitution . . . . .	16

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NOTE: Richard Henry Lee and Thomas Nelson, of Virginia, and Charles Carroll of Carrollton, Thomas Stone and Samuel Chase, of Maryland, have been included in the above list by some historians.



*PART THREE*

*THE MAKERS OF THE CONSTITUTION*

“To those great men who framed the Constitution and secured the adoption of it we owe a debt of gratitude which can scarcely be repaid. It was not then, as it is now looked upon, from the blessings which it has bestowed, with general favor and affection. On the contrary, many of those pure patriots who stood forth the firm advocates of its principles did so at the expense of their existing popularity. They felt that they had a higher duty to perform than to flatter the prejudices of the people or to subserve selfish, sectional or local interests. Most of them went to their graves without the soothing consolation that their services and their sacrifices were duly appreciated. They were content to trust their characters and their conduct to the deliberate judgment of posterity.

“If, upon a close survey of their labors as developed in actual structure of the Constitution, we shall have reason to admire their wisdom and forecast, to observe their profound love of liberty, and to trace their deep sense of the value of political responsibility and their anxiety above all things to give perpetuity as well as energy to the republican institutions of their country, then indeed will our gratitude kindle into a holier reverence, and their memory will be cherished among those of the noblest benefactors of mankind.”—JUSTICE STORY, *A Familiar Exposition of the Constitution of the United States*, pages 35 and 36.

## I

### THE PERSONNEL OF THE CONVENTION

THE Convention, which wrote the Constitution, was a convention of notables. Thomas Jefferson spoke of it in after years as a convention of demigods. Robert Morris, the Philadelphia banker, financier of the Revolution, and a member of the Pennsylvania delegation, was not so sure of Jefferson's praise, and thought many groups of equal ability and patriotism could have been brought together. But altogether, we must agree with the judgment of one of our modern historians, who has asked the question whether the America of today, with forty times the population of that day, could assemble forty times as many seasoned statesmen of equally great ability and far-reaching patriotism.

The men who served as delegates belonged to the upper class of American society and had much at stake in the new government they established. Forty of the fifty-five held government securities or were bankers and money-lenders, and fifteen of them owned slaves. Great merchants were also represented. But the majority of the delegates were members of the legal profession, which was not a popular one at that period of our history. Washington and Madison were planters as well as statesmen. The wealth of that day was imperiled by the calamitous conditions which prevailed, and the prosperity which followed in the wake of the new government meant much to those who started it on its way.

There was then little if any mechanical industry on the modern scale, labor was not yet organized, and no member there spoke the voice of the toiler in the field or factory. Only four percent of the country's population lived in cities, and the country was still overwhelmingly agricultural.

The group which wrote our Constitution was made up of educated men. Twenty-nine of them were college-bred. Princeton University, then known as the College of New Jersey, with ten delegates,



led all the colleges in the number of alumni represented. The Princeton men were Paterson, Houston, Dayton, and Brearly, of New Jersey; Madison, of Virginia; Bedford, of Delaware; Ellsworth, of Connecticut; Luther Martin, of Maryland; and Davie and Martin, of North Carolina. Ellsworth had also attended Yale before going to Princeton. The College of William and Mary in Virginia had the next largest number, being represented by Randolph, Blair, Wythe, and McClurg, of the Virginia delegation; and John Francis Mercer, a native of Virginia, who served as a delegate from Maryland. William Samuel Johnson, of Connecticut, who was known as "Dr. Johnson," had a B. A. degree from Yale as well as a M. A. degree from Harvard. Gerry, King, and Strong, of Massachusetts, were Harvard men. Johnson had been elected president of Columbia College, then called King's College, in New York, a few days before the Convention opened. Abraham Baldwin, of Georgia; Ingersoll, of Pennsylvania, and Livingston, of New Jersey, were all Yale men. They, with Johnson and Ellsworth, made a group of five Yale men in the Convention, the same number as from the College of William and Mary.

Mifflin, of Pennsylvania, and Williamson, of North Carolina, were graduates of the University of Pennsylvania. Alexander Hamilton and Gouverneur Morris were educated at King's College, now known as Columbia University. Oxford University in England had an alumnus in Charles Cotesworth Pinckney, of South Carolina; Richard Dobbs Spaight, of North Carolina, had been educated at the University of Dublin, and James Wilson at both the Universities of St. Andrew and Aberdeen in Scotland.

In addition to these men who had academic training in the best universities of their day, there were others who had been sent abroad for their legal training.

It will be some comfort to the non-college man to know that Washington, the President of the Convention, and Franklin, its sage and many-sided man of the world, were not college men, though both held honorary degrees of Doctor of Laws from both Yale and Harvard, and Dr. Franklin, for that was what he was called, had been honored by many of the greatest universities and learned societies of both America and England.

The medical profession was represented by three delegates, Mc-

Henry, of Maryland, McClurg, of Virginia, and Williamson, of North Carolina, all of whom stood high in their profession and had seen service in the Medical Corps during the Revolutionary War, although McClurg was the only one whose entire life was devoted to medicine.

It was also a convention of young men. The average age of all the delegates was about forty years. Benjamin Franklin, the sage of the Convention, was eighty-one years, three times the age of Jonathan Dayton, of New Jersey, the "baby member" of the Convention. Hamilton and Madison, its two most brilliant minds and the first two leaders who actively planned for such a Convention, were respectively thirty and thirty-six years of age. The oldest delegation as a whole was that of Connecticut, one of which, Roger Sherman, ranked next to Franklin in years. Two other delegates, Charles Pinckney, of South Carolina, and Mercer, of Maryland, were only twenty-nine years of age. They as well as many others had been born after Dr. Franklin had already become a national figure.

Forty-two of the fifty-five delegates who gathered at Philadelphia had served in the Continental Congress, eighteen of them being members of the Congress in session at New York at the same time the Convention was in session. The delegations from New Hampshire in the North and Georgia in the South were made up entirely of men then serving in the Continental Congress. Gorham, of Massachusetts, and Mifflin, of Pennsylvania, had also served as Presidents of the Continental Congress.

Sixty-five delegates in all were named to go to Philadelphia. Three of that number, Patrick Henry, of Virginia, and Richard Caswell and Willie Jones, of North Carolina, declined to go and others were elected in their stead. Seven others, John L. Nielson and Abraham Clark, of New Jersey, Ben West and John Pickering, of New Hampshire, George Walton and Nathaniel Pendleton, of Georgia, and Francis Dana, of Massachusetts, were selected as delegates but failed to go and were not replaced by others. Two of that number, Henry, of Virginia, and Jones, of North Carolina, were enrolled later among the enemies of the Constitution. Clark, a signer of the Declaration of Independence and a delegate to the Annapolis conference, was later a member of Congress. Walton

had also signed the Declaration of Independence and later was Governor, Senator and Chief Justice of the Supreme Court of Georgia. His colleague, Pendleton, later became a United States District Judge, but left Georgia after his disgraceful manipulations in the Yazoo land frauds in which he was a principal, moved to New York, and was Hamilton's second in his duel with Burr. Pickering was later United States District Judge, an office in which he was impeached and found guilty by the Senate.

Twenty-six of the delegates were destined to serve in the House or Senate of the Congress established under the new Constitution. Eighteen of that number saw service as Senators. They were Langdon and Gilman, of New Hampshire, Strong and King, of Massachusetts, Johnson, Sherman and Ellsworth, of Connecticut, Dayton and Paterson, of New Jersey, Gouverneur Morris and Robert Morris, of Pennsylvania, Bassett and Read, of Delaware, Alexander Martin, of North Carolina, Charles Pinckney and Pierce Butler, of South Carolina, and Few and Baldwin, of Georgia. All of them were sent to the Senate from the same states they represented at Philadelphia except King, of Massachusetts, who was a Senator from New York, and Gouverneur Morris, of Pennsylvania, who went to the Senate from New York, his home state to which he returned later in life. Gilman, Sherman, Dayton and Baldwin first served in the House of Representatives, Dayton serving also as Speaker. In addition there were eight members, Carroll and Mercer, of Maryland; Fitzsimmons and Clymer, of Pennsylvania; Madison, of Virginia; Spaight and Williamson, of North Carolina, and Gerry, of Massachusetts, who served only in the House of Representatives.

Many of the great men in the Convention had taken part in earlier movements of the colonies for a redress of their wrongs. John Dickinson, of Delaware, William Samuel Johnson, of Connecticut, and John Rutledge, of South Carolina, had served in the Stamp Act Congress of 1765 in New York.

Eight of the delegates to the Constitutional Convention had been signers of the Declaration of Independence eleven years before. They were Gerry, of Massachusetts; Sherman, of Connecticut; Robert Morris, Franklin, Wilson and Clymer, of Pennsylvania; Read, of Delaware, and Wythe, of Virginia; although two of this number,

Gerry and Wythe, did not sign the Constitution. The names of six of the delegates, Gerry, of Massachusetts; Sherman, of Connecticut; Gouverneur Morris, of Pennsylvania; Robert Morris, of Pennsylvania; Dickinson, of Delaware, and Carroll, of Maryland, were affixed to the Articles of Confederation which the Convention met to revise and amend, and all but discarded before it adjourned. Dickinson had served as the chairman of the Committee which drafted them.

Seven members of the Constitutional Convention served in the first session of the Continental Congress when it met September 5, 1774, in the then newly erected Carpenters' Hall not far from the seat of Convention. They were George Washington, of Virginia, President of the Convention; Sherman, of Connecticut; George Read, of Delaware; Mifflin, of Pennsylvania; Livingston, of New Jersey; Dickinson, of Delaware, and Rutledge, of South Carolina.

The governors of three states, Livingston, of New Jersey; Franklin, of Pennsylvania, and Randolph, of Virginia, led their state delegations, and eleven other delegates were chosen in later years as governors of their home states. They were Langdon, of New Hampshire, who had already been President of New Hampshire; Gerry and Strong, of Massachusetts; Paterson, of New Jersey; Bassett, of Delaware; Mercer, of Maryland; Alexander Martin, Davie, Blount, and Spaight, of North Carolina, and Charles Pinckney, of South Carolina. Blount served as Territorial Governor of what is now the state of Tennessee. Rutledge, of South Carolina, had already served both as President and Governor of his state, and Dickinson had served as Chief Executive of both Pennsylvania and Delaware.

Sherman and Ellsworth, of Connecticut; Brearly, of New Jersey; Blair and Wythe, of Virginia; Yates, of New York, and Rutledge, of South Carolina, were serving on the highest courts of their respective states when selected as delegates to the Convention. Read, of Delaware, and Lansing, of New York, served later as Chief Justices of the Supreme Courts of their home states. Five members of the Convention, Ellsworth, of Connecticut; Paterson, of New Jersey; Wilson, of Pennsylvania; Blair, of Virginia, and Rutledge, of South Carolina, were destined to occupy seats on the Supreme Court of the

United States. Two of that number, Rutledge and Ellsworth, were to be appointed successively as Chief Justices by Washington. Paterson, of New Jersey, and Bedford, of Delaware, had held the offices of Attorneys General of their respective states. Bedford, of Delaware, and Brearly, of New Jersey, later occupied Federal judgeships, and Randolph became the first Attorney General of the United States under President Washington.

Two of the delegates, Washington, the President of the Convention, and Madison, its unofficial secretary, both from Virginia, served later for two terms each as President of the United States. One delegate, Gerry, of Massachusetts, became Vice-President, an office he had opposed on the Convention floor. Charles Cotesworth Pinckney, of South Carolina, and Rufus King, of Massachusetts, were also unsuccessful candidates for President, the former being the nominee of the Federalist party in 1804 and 1808, and the latter in 1816. Jared Ingersoll, of Pennsylvania, was the Federalist nominee for Vice-President in 1812.

Twenty-two former soldiers of the Revolution were honored with seats in the Convention. In addition to Washington, who had been the head of the army, Mifflin, of Pennsylvania, and C. C. Pinckney, of South Carolina, had held the rank of Major General and had been famous soldiers. Nineteen others had seen service as officers of merit. All of the former soldiers were members of the Society of the Cincinnati. C. C. Pinckney served later as President of the Society, while Gilman, Hamilton and Dayton were active in its membership.

Four of the men who helped write the Constitution later held cabinet positions, places in the government not specifically provided for in the Constitution. Hamilton, of New York, was the first Secretary of the Treasury; Randolph, of Virginia, succeeded Jefferson as Secretary of State; McHenry, of Maryland, succeeded Knox as Secretary of War, all during the administration of Washington, and Madison served for eight years as Secretary of State under Jefferson.

King, of Massachusetts, served as minister to England for many years, and Charles Pinckney, of South Carolina, as minister to Spain. Gerry, of Massachusetts; Ellsworth, of Connecticut; Davie, of North Carolina, and Charles Cotesworth Pinckney, of South Carolina, all

served later on special diplomatic missions to France. Pinckney held a commission as minister to France but was not seated. Franklin, whose days of public service were now rounding to a close, had already won immortal renown as minister to both England and France.

While there were no active ministers serving as delegates, two of the delegates, Williamson, of North Carolina, and Baldwin, of Georgia, had once served as ministers of the Gospel. Both were college men, one a native of Pennsylvania and the other from Connecticut.

## II

### VIRGINIA AND THE CONSTITUTION

**V**IRGINIA is known in American history as the Mother of Presidents. Likewise, she should be known as the birth-place of Constitutional Government, for the constitution of that state, adopted on June 29, 1776, was the first written one of its kind in the history of the world, and the "Virginia Plan," submitted at the Philadelphia Convention, served as the basis for the present Constitution of the United States.

The Constitution of Virginia also contained the Declaration of Rights from which the early amendments to the Constitution of the United States were derived.

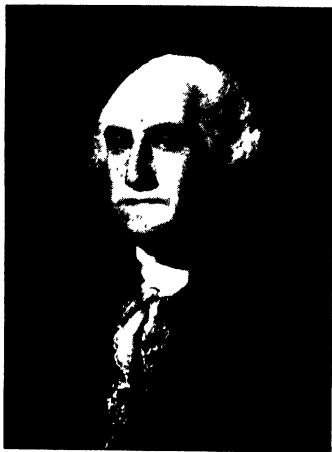
It was a Virginian, Dabney Carr, who had offered in the Virginia House of Burgesses, on March 12, 1773, the resolution that a committee be appointed to correspond with similar committees from the other colonies, which step led to the working union of the states three years later.

It was no accident that Virginia should have contributed so heavily to the early political history of the United States. She was the oldest colony, her first settlement at Jamestown having been made in 1607, and after the first few difficult years she had been singularly fortunate in many ways. By 1625 about 6,000 men had come out from England, four-fifths of whom had died; by 1649 there were 15,000 English in the colony and 300 Negro slaves. The first settlers had in many cases been of the lowest ranks of Englishmen, many of them exported convicts.

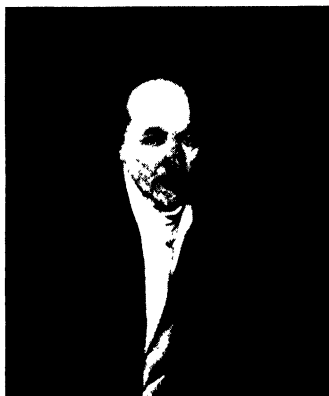
But between 1650 and 1660 a great change took place. England was torn by a violent religious war, and to escape Cromwell's Puritan "Roundheads" many of the Episcopal gentry, the "Cavaliers," moved to Virginia. Being wealthy, they brought their families with them and established great plantations, and their descendants set the tone for Virginia's social and political life for the next two hundred years, for among them were the founders of such



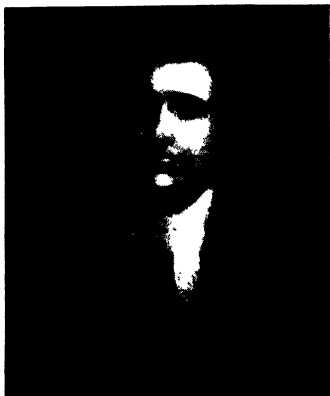
*James Madison Jr.*



*John Marshall*



*John Blair*



*Edmund Randolph*





great names as the Washingtons, the Madisons, the Monroes, the Marshalls, and many other of the "First Families of Virginia." By 1670 the population of the colony was 32,000 freemen, 6,000 indentured servants, and 2,000 slaves.

These later immigrants of the English upper classes were of a particularly independent, self-asserting type, and this, combined with the fact that during Cromwell's Commonwealth the colonists deposed the Royal Governor and until the Restoration in 1660 elected their own, gave them an experience in practical self-sufficiency which they never forgot. With the Restoration in 1660 the old governor, Berkeley, was restored, but when he attempted to enforce the Navigation Acts, which forbade the colonists to ship their products in other than English bottoms or sell their goods other than in England, connived with the customs officers to his own profit, and refused to protect the border against Indian attacks because of the harmful effect on the fur trade, the colonists in 1676 rose in "Bacon's Rebellion" and temporarily drove him out of the colony. Nathaniel Bacon, their leader, who was said to have been a collateral descendant of the great English judge, Lord Bacon, died shortly after and Berkeley could return, but he took such harsh measures against the former rebels that Charles II recalled him and allowed him to die in disgrace. "The old fool has taken more lives in that naked country than I have taken for the murder of my father," Charles said.

For the next seventy-five years Virginia progressed quietly and peacefully, with varyingly good and rapacious governors. By the turn of the century the population was near 100,000; in 1700 several hundred French Huguenots were added to the English stock, in 1730 the Scotch-Irish and later German colonists came and settled in the Shenandoah Valley, and by 1750 settlers were beginning to cross the watershed of the Alleghenies in the ever-widening search for new sites for settlement.

Virginia had before that time been spared any very active part in the age-old struggle between England and France for supremacy, into which New England had been drawn repeatedly, first in "King William's War" (1690-1697), then in "Queen Anne's War" (1702-1713), known in Europe as the War of the Spanish Succession, then in "King George's War" (1741-1748), the American counterpart of

Europe's War of the Austrian Succession. Virginia was not affected until the outbreak of the "French and Indian War" (1754-1763), called in Europe the Seven Years' War.

In this last war, in which the youthful George Washington received his baptism of fire, Virginia bore the brunt of the fighting which centered about Fort Duquesne on the site of what is now Pittsburgh and had for its object the control of the Ohio River Valley. France was completely defeated, and by the peace treaty lost every foot of her possessions on the American mainland, England acquiring thereby all of Canada, and all of the territory south of the Great Lakes and east of the Mississippi River except New Orleans, which went to Spain.

With the end of the war, Virginia could return to the ways of peace, a considerable post-war prosperity, and the quiet life of loyal and grateful subjects of their King. Such might have been the case except for three decisions made in England. First, that the colonies, which had hitherto contributed little directly to the cost of administering the Empire, should henceforth pay their share in taxes to help defray the huge national debt which had been created by the recent war; second, that the region west of the Appalachian Mountains, from Canada on the north to the Gulf of Mexico on the south, was to be administered primarily as a preserve for the King's newly acquired Indian subjects and their lucrative fur trade; and third, that the Acts of Trade, which had been largely ignored during the war period, were henceforth to be re-established more perfectly than ever, to the end that only English bottoms carry goods to and from the colonies, and that every ship which touched at North American ports had to trans-ship its goods via England to a point like the British West Indies, or pay a duty in the West Indies equal in amount to the cost of such trans-shipment.

Such measures, following one after the other, were not wise, and previous generations of English politicians had hesitated to go so far with the King's headstrong American subjects. But Lord Grenville, the new Prime Minister, ignored cautioning voices of men who, like the Vicar of Greenwich, had been in Virginia in 1759 and had written of Virginians that "they are haughty and jealous of their liberties, impatient of restraint, and can scarcely bear the thought of

being controlled by any superior power, while many of them consider the colonies independent states not connected with Great Britain otherwise than by having the same common King and being bound to her with natural affection, while they think it a hardship not to have an unlimited trade to every port of the world."

In New England as early as 1761 the merchants and ship-captains resisted writs intended to enforce compliance with the Acts of Trade; in Virginia the first open protest came in 1765, against the newly enacted Stamp Taxes. "Taxation without representation is tyranny," the colonists declared, and asserted their own exclusive right to levy taxes in their elective assemblies. Rough, rugged and rustic Patrick Henry, who was attending his first session as a member of the Virginia House of Burgesses, on the floor boldly warned the King of the fates of Cæsar and Charles the First, and when others, aghast, shouted, "Treason! treason!" he retorted, "If this be treason, make the most of it!" Governor Fauquier immediately dismissed the Burgesses before they could elect delegates to the Stamp Act Congress called in protest by the northern colonies, but Henry's "Virginia Resolutions," not as the Burgesses had adopted them but as Henry had proposed them, ran through all the colonies like wildfire.<sup>1</sup>

After this outbreak things again ran a fairly smooth course in Virginia, though in 1769 the Burgesses had again to be dissolved by the Governor, to which they replied by voluntarily organizing societies pledged not to buy importations from England, hoping thereby to "starve her trades and manufactures" into a different view of things. But in 1772 came another blow which affected Virginia particularly in the famous "Quebec Act," which put the administration of the entire area north of the Ohio River and west of the Allegheny Mountains under the Governor of Quebec. This included more than half of Virginia's immense western territory, and Virginians of every degree, whether they owned lands in the region or not, were highly incensed. From then on steps progressed rapidly to open

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<sup>1</sup> There is a traditional story that the wives of Virginia troops who took part in the Revolution a few years later, inspired by Patrick Henry's address in Old St. Johns in Richmond, worked in the buckskin shirts of their warring husbands the words, "Liberty or Death." The wife of one Virginia soldier, not quite so enthusiastic as her neighbors, worked in the shirt of her patriotic husband the words, "Liberty or *Seriously Wounded*."

conflict: in 1774 the First Continental Congress, in 1775 the Second Continental Congress, the expulsion of Governor Dunmore from Virginia, and the opening of hostilities around Boston with George Washington, of Virginia, as General-in-Chief of the Continental Armies.

The story of the war is told more fully in other parts of this book, in connection with the life stories of the men who took part in it. Virginia men and treasure contributed greatly to its ultimate success, though the state did not itself suffer from its ravages until the last years preceding Yorktown, in 1781, after which hostilities practically ceased.

Virginia statesmen were leaders in the two important conferences held at Alexandria, Virginia, and Annapolis, Maryland, the immediate forerunners of the convention at Philadelphia, and it was a Virginian, James Madison, who, a few weeks before that convention opened, set forth in a letter to Thomas Jefferson, another Virginian, the first outline of what is known in history as the "Virginia Plan."

When the Convention opened it was George Washington who was unanimously chosen as its presiding officer. Though William Jackson was the official secretary elected by the Convention, it was Madison, another Virginian, who kept the only complete record of what took place behind its closed doors. Before the Philadelphia Convention opened on May 25, 1787, the seven Virginia delegates met there almost daily with the Pennsylvania delegates to discuss the needs of the nation and the matters to be determined by the Convention. At its opening, the Virginia delegation of seven was, next to that of Pennsylvania, the largest at Philadelphia, and in the opinion of many the ablest there. Unfortunately two of the Virginia delegates, Wythe and McClurg, one a great chancellor and lawyer, the other an eminent physician, were called home early in the session of the Convention. Even more regrettably, two other Virginia delegates, Governor Edmund Randolph, the leader of the delegation, and George Mason, one of its greatest members, refused at the end of the Convention to approve the work in whose preparation they had had so vital a part. Ultimately only three of the seven original delegates, Washington, Madison, and Blair, signed the Constitution.

Much concern was felt throughout the colonies over what Virginia would do when its convention met on June 2, 1788, to act on the question of ratification. The convention was first assembled in the new capitol, but more room was needed for its 170 delegates, and thereafter it met in the new French Academy on Shockoe Hill in Richmond, located on the north side of Broad Street between Twelfth and Thirteenth Streets, where the Monumental Church later stood. The academy had been erected as the nucleus for a French-American university by the Chevalier Quesnay of France, but was abandoned when the French Revolution began soon after the convention was over.

There has probably never in the history of the Union before or since that date been assembled a larger number of truly great men, all of them citizens of the same state, than gathered on the floor of this convention, and it ranked next to the Philadelphia Convention itself in this respect. The Pennsylvania delegation at Philadelphia may have equalled or even outranked the Virginia delegation, but the average caliber of the men in the Pennsylvania ratification convention was below that of the men in the Virginia convention.

The forces in favor of ratification won the first tilt when Edmund Pendleton, a revered and honored Virginian, who came to the convention on crutches as the result of a recent fall from his horse, was chosen as president of the convention. Pendleton had served in the first Continental Congress fourteen years before, was one of the authors of Virginia's first call for independence, was a co-author of the first Constitution of Virginia, and was a genuine leader of rugged force. The secretary was John Beckley, who one year later was chosen as the first clerk of the House of Representatives and the first Librarian of Congress. The chairman of the committee of the whole, which was in frequent session, was the erudite George Wythe, chancellor of the state and honored by all, who now did yeoman service on behalf of the Constitution which he had been prevented from doing at Philadelphia because of the illness of his wife.

It was a strange turn of fate which made Edmund Randolph a spokesman for ratification in Virginia. As Governor of the state and leader of the Virginia delegation at Philadelphia, he had made the opening address there and submitted to the Convention the

framework around which the Constitution was written. After having done all this, he had refused to sign the completed document at the end of the Convention, though he had stated at the time that he reserved the right to decide his future attitude towards its approval by the states. However, eight of the nine states necessary to make the Constitution effective had ratified when the Virginia convention opened, and for Randolph it thereafter became a question of union or disunion. He was for union, and now boldly championed the cause of ratification.

Randolph was greatly aided by Madison, the frail, good-natured and scholarly young statesman who had been one of the "Big Four" at Philadelphia. While Randolph as Governor was a nominal leader, his change of front and lack of decisiveness had not added to his popularity with either side, and it was Madison who furnished the intellectual battering ram which all but demolished the verbal breastworks of the vocal Henry.

In addition to Governor Randolph and Madison, the forces in favor of ratification had among their cohorts John Marshall, the future Chief Justice of immortal fame; Bushrod Washington, who served for thirty years on the Supreme Court under appointment from John Adams; General Henry Lee, known as "Light Horse Harry," an orator of distinction, a Congressman, and at one time Governor of Virginia; Dr. David Stuart, the husband of the widow of John Parke Custis, the only son of Martha Washington, and herself a member of the prominent Calvert family of Maryland; James Innes, the portly and able young Attorney General of Virginia; Francis Corbin, whose family intermarried with the Washington family; Humphreys Marshall, a cousin of John Marshall, chosen a few years later as one of Kentucky's first United States Senators; and George Nicholas and Wilson Cary Nicholas, brothers-in-law of Governor Randolph, both of whom later held high public honors, the former in Kentucky and the latter in Virginia. George Nicholas, who delivered the opening address of the ratification convention, was later allied with the political element in Kentucky which was influenced by Jefferson to issue the Kentucky Resolutions of 1798, which advocated nullification by the states of the odious Alien and Sedition Acts passed by Congress.

The leader of the opposition was Patrick Henry, who served as a delegate from what was then his home county, Louisa County, one of the several Virginia counties in which he resided during his meteoric public career. Henry had as his first lieutenant George Mason, one of the members of the original Alexandria conference, a member of the Philadelphia Convention, and, more important than that, one of the fathers of Virginia's first constitution and the author of the Virginia bill of rights. Mason had more fundamental objections than Randolph in refusing to sign the Constitution at Philadelphia. He was not only displeased at the compromise on the slavery-commerce issue, but he felt humiliated, though a slave-owner himself, that slavery as an institution was not outlawed by the Constitution, and above all else Mason was an original states'-rights democrat who could not yield to the larger view-point of those who favored a strongly centralized national government. Mason on the opening day moved that the proposed new Constitution be discussed section by section before being voted on as a whole, which was done.

In addition to these great leaders, two men who served as governors of Virginia, Benjamin Harrison and John Tyler, neighbors and relatives from Charles City County, opposed the ratification of the Constitution and supported Henry in his effort to defeat it. Harrison had signed the Declaration of Independence twelve years before, had been Governor of Virginia, and was the father of a young son named William Henry Harrison, destined fifty-three years later to take an oath as President of the United States to uphold the Constitution his father had opposed. Tyler was to become the father of John Tyler, Junior, who would succeed the son of Harrison as President of the United States. Henry also had as a helper a former Continental Congressman, James Monroe, who had opposed ratification of the Constitution and was destined twice to become President.

One of his ablest followers was William Grayson, who had won high distinction in the Continental Congress as one of the authors of the famous Northwest Ordinance enacted on July 13, 1787, while the Constitutional Convention was in session. Grayson was to declare, in a speech to the Virginia convention, that any man was well born who came into the world with a healthy body and



sound mind. Though Henry was to fail in defeating the ratification of the Constitution, he was not to fail in his ambition to name the two Virginians, Grayson and Richard Henry Lee, as its first representatives in the United States Senate. Grayson died while serving as Senator and was succeeded by Monroe.

It was unfortunate for Patrick Henry that Richard Henry Lee, one of the great leaders of Virginia, was not a member of the convention. He was a great Virginian who had served as president of the Continental Congress and who as a member of that body had opposed the submission of the Constitution to the states by the Congress without suggesting amendments thereto. Lee had also made addresses against ratification in Philadelphia and Wilmington while enroute to Virginia. He, like Patrick Henry, reversed himself and became a follower of Hamilton a few years later.

Another distinguished Virginian to follow the Henry standard was Edmund Ruffin, whose descendant fired the first shot at Fort Sumpter nearly seventy-five years later and brought to an immediate issue the question of states' rights and the settlement of the slavery question, issues left unsolved by the Constitutional Convention. John Dawson, who as a Virginia Congressman was the author of the twelfth amendment to the Constitution, also opposed its ratification. Stephen T. Mason, a brother of George Mason, an eminent lawyer of his day, whose son and grandson later represented Virginia in the Senate of the United States, also opposed ratification.

Henry's greatest appeal was to the western delegates, whom he warned of the possible loss of use of the Mississippi River should a new government be established. He had a plausible excuse for that fear in the effort Jay had made to have the Continental Congress, in exchange for certain commercial privileges to eastern shippers in the world-wide ports of Spain, surrender its claim to the free use of the Mississippi River, a right won in the War of Independence and ceded in the peace treaty with England. Henry hinted at a separate southern confederacy if he was defeated in his fight against ratification, a possibility which however had in practice vanished when South Carolina ratified the Constitution some weeks before the Virginia convention. Nine of the fourteen Kentucky delegates voted against ratification. Two of them failed to vote. The three dele-

gates who voted for ratification were York, Shimsley, and Warning from Jefferson County (Louisville).

Henry made much of the words "We, the people," in the preamble to the Constitution, and correctly construed them as proof that the new Government was to be a separate entity, and not a mere Confederation of sovereign independent states. He lived to change his own attitude toward that government, but he properly sensed the trend of the times.<sup>2</sup>

His frequent and flamboyant appeals, and particularly his fiery invocations of liberty in the abstract, consumed more hours of the convention than anything else. On one occasion when an electrical storm arose during an oratorical outburst, he melodramatically invoked the unseen spirits to bear witness to his warnings and terrified his hearers with a graphic picture of the woes which would befall the nation should the Constitution be adopted. It was said that his portrayal was so vivid that the delegates rushed from the hall in bewilderment. In the end he spoke so often and with so much passion, that the force of his leadership was greatly lessened.

Henry, the fiery and eloquent forest-born Demosthenes of the masses, often taunted Randolph, the cultured leader of the lowland aristocracy, for having apparently changed his attitude toward the Constitution. Their forensic combats were frequent, Henry was extreme in his attacks, and on one occasion Randolph was deeply aroused in reply to Henry's shafts. But both of them calmed down at the end of the convention.

Henry said, in his valedictory just before the final vote was taken:

"I beg pardon of this House for having taken up more time than came to my share, and I thank them for the patience and polite attention with which I have been heard. If I shall be in the minority, I shall have those painful sensations which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceful citizen. My head, my hand, and my heart, shall be at liberty to

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<sup>2</sup> A grandson of Henry, William Henry Roane, born on September 17, 1787, the day the Constitution was signed at Philadelphia, lived to serve as a Congressman and Senator from Virginia.

retrieve the loss of liberty, and remove the defects of that system in a constitutional way. I wish not to go to violence, but will wait with hope that the spirit which predominated in the revolution is not yet gone, nor the cause of those who are attached to the revolution yet lost. I shall therefore patiently wait in expectation of seeing that government changed so as to be compatible with the safety, liberty, and happiness of the people."

Randolph's summary of his position at the same time was:

"Mr. Chairman, one parting word I humbly supplicate.

"The suffrage which I shall give in favor of the Constitution will be ascribed, by malice, to motives unknown to my breast. But although for every other act of my life I shall seek refuge in the mercy of God, for this I request His justice only. Lest, however, some future annalist should, in the spirit of party vengeance, deign to mention my name, let him recite these truths—that I went to the Federal Convention with the strongest affection for the Union; that I acted there in full conformity with this affection; that I refused to subscribe, because I had, as I still have, objections to the Constitution, and wished a free inquiry into its merits; and that the accession of eight states reduced our deliberations to the single question of Union or no Union."

When the convention had completed its work of considering the Constitution clause by clause and had debated it from every angle, Henry offered a lengthy declaration of rights which he wanted adopted and recommended to the other states. However, the convention refused, by a vote of eighty to eighty-eight, to adopt them and ratified the Constitution by a vote of eighty-nine to seventy-nine when Mason and Henry called for the vote. Only one delegate, David Patteson, had changed his vote from the opposition to the majority between the two votes.

Randolph was made the chairman of the committee to prepare the form of ratification. The convention then approved the twenty resolutions suggesting amendments to the Constitution, proposed by the committee of which George Wythe was the chairman.

One of the last acts of the Virginia convention before its adjournment on June 27th was to defeat by a vote of eighty to sixty-five a

resolution to require an amendment to the Constitution so as to allow each state to collect a federal tax assessed against it, and to provide for its collection by the federal government only when the state had failed to make payment of the requisition made upon it. The delegates were much divided on that subject, and Edmund Pendleton, the president of the convention and a leader for ratification, voted with Patrick Henry in opposing this resolution, which was supported by many leading members.

With the Constitution ratified, however, the struggle was not over. The Henry forces were slow to yield, after being defeated by only ten votes on the convention floor. The legislature of Virginia, which met before the convention adjourned, approved the plan sponsored by Governor Clinton, of New York, for a second constitutional convention to consider changes in and amendments to the Constitution, a plan which however found a frosty welcome outside of New York and Virginia. As a last shaft, Henry was able to prevent Madison's going to New York as one of the state's two first United States Senators, by obtaining the election of William Grayson and Richard Henry Lee at the hands of the legislature which he still controlled.

#### *GEORGE WASHINGTON*

In all the list of America's first patriots there is no personality so striking as that of George Washington. No one contributed as much as he to the successful outcome of the struggle for independence, no other single person was more influential in bringing into being the new Constitution in 1787 and in obtaining its acceptance in 1788, and no one was more masterfully far-sighted in the patient labors which were required to establish a working government at home and avoid the pitfalls of diplomacy abroad in the trying years of 1789 to 1797.

Washington the man was the key to Washington the soldier and statesman. Physically he was impressive and built to endure; he was over six feet tall, strong, robust, weighing at his best two hundred and twenty pounds, his hands and feet large (he wore size 14 shoes), and his face lightly pock-marked, as were the faces of many men of his day. Life to him was serious business. Though in pri-

vate he was often cheerful and even gay, he was by nature reserved, dignified, and not given to frivolity or humor. His judgment both of men and of measures was unerring, and his moral integrity was a by-word.

George Washington did not spring into existence full-panoplied for his great tasks. Neither did he, like many others before and after him, have to struggle upward from the lowest rungs of the ladder of success. His family and social connections were of the best, comparatively early in life he had some extraordinary strokes of good fortune, and his natural gifts were many. All of these together, he was able steadily to combine to prepare himself and be ready for the many tasks which it fell to his lot progressively to perform, and none of the greatest of which he ever solicited.

Washington's paternal ancestors had been of the higher English gentry. Sulgrave Manor, the old Washington homestead in England, is still standing, and has recently been restored as an international shrine to the memory of the illustrious descendant of the men who once lived there.

John Washington, his great-grandfather, first came to Virginia in 1651 to escape the trials of Cromwellian England. He found the life on the broad Virginia plantations much as his life had been as an English country gentleman, and apparently adapted himself easily to his new surroundings. He established himself in the then still untouched Northern Neck, where he cleared several thousand acres, acquired slaves and built his manor-house, from which he sent his sons back to England for their education. His son Lawrence added to his father's broad estates, as did Lawrence's son, Augustine. Sea-going ships touched periodically at their private wharves along the river to carry the plentiful bales of tobacco and other crops to England, and a part-interest was even acquired in a nearby iron foundry, one of the earliest industrial ventures in the colony.

Augustine Washington had seven children, Lawrence and Augustine by his first wife, and five others, of whom George was the eldest, by his second wife, whose name before her marriage was Mary Ball. George was born on February 22, 1732, at Wakefield, one of his father's estates near the Potomac in Westmoreland County, Virginia,

about sixty miles below Mount Vernon.<sup>3</sup> Two years later Augustine moved his home to the "Ferry Farm" on the Rappahannock River near Fredericksburg, and it was there that the young George is said to have chopped down his father's valued cherry tree with his little hatchet and ridden the pony which broke its neck.

In 1739 Lawrence, the oldest brother, returned at twenty-one from England, where he had been educated and served for a time in the English army, including a short campaign in Spain. In 1740 he sailed with Admiral Vernon's fleet to attack the Spanish West Indies, saw terrible days at Cartagena, and himself came down with the pox. On his return in 1742 he became major in the colonial militia, and later adjutant-general in the district in which his father's estates lay.

But in 1743 Augustine, the father, died unexpectedly, and was buried next to his father's and his grandfather's bones near Wakefield, in an old cemetery which was restored in 1932. Lawrence as the eldest son received as his share the principal estate at Mount Vernon, named after Admiral Vernon, and the next half-brother, Augustine, received the Wakefield property. The younger children, George, John Augustine, Samuel, Charles and Bettie, received nothing but the Rappahannock farm between them and the promise of an education at their older brothers' hands.

Lawrence, whose health was not good after his West Indies campaign, had always been closest to his younger brother George, and now took principal charge of him. An education in England like his own he could not give him, but what the local schools afforded George got. It included reading, writing, some arithmetic, and a little trigonometry (the basis of his later surveying), bookkeeping, agriculture and history—a great deal for those days. He became Lawrence's assistant as they rode daily about Mount Vernon, and, since young robust men matured early in such a life, George was also soon a popular guest at Belvoir,<sup>4</sup> the estate of Lawrence's father-

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<sup>3</sup> George Washington was born on February 12th according to the Julian Calendar which was used until 1752 when the Gregorian Calendar was adopted.

<sup>4</sup> Fort Belvoir in Virginia, in 1936, included the William Fairfax homestead.

in-law, William Fairfax, who was president of the King's Council, manager of the vast Virginia acres of his cousin, Lord Fairfax, and generally one of the wealthy and influential men in the colony.

But young George still had no established future, and it was for him to make his way as best he could as things stood then. Lord Fairfax owned thousands of acres in the northern neck of the colony, and had built a country place called Greenway Court near Winchester.<sup>5</sup> To gain a better picture of his vast properties he engaged the now sixteen-year-old George Washington to survey them. For months young Washington broke his own way through tangled swamps, forded turbulent mountain streams, and at night pitched camp wherever he and his party happened to be. It was hard, exacting work, but George was painstaking, self-reliant, and robust, did his work to Lord Fairfax's entire satisfaction for the next three years, and at nineteen was commissioned as official surveyor for Culpepper County, his first public position.

Before he was twenty, George Washington had succeeded to Lawrence's position as major of the militia and adjutant-general of his district, and at twenty-one his active military career began. That summer (1753) the French flag and French troops had penetrated down the Ohio River to points which Virginians had always regarded as their own.<sup>6</sup> Governor Dinwiddie did not like it, and sent Colonel George Washington, who by reason of his surveying activities for Lord Fairfax was by now perhaps the best-informed man in Virginia on the western country, to tell the French commandant to withdraw. Washington set out at once and after an arduous journey delivered his message, but carried back only a polite but blunt "No."

Military action was now indispensable, for England and France were already engaged elsewhere in the great struggle of the Seven Years' War, and France was apparently determined to attack England also on the American front. Governor Dinwiddie sent Colonels Joshua Frey and Washington with a hastily organized and undrilled force to dislodge the French at Fort Duquesne, which they had built in the meantime near the site of what later became the city of Pitts-

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<sup>5</sup> The Fairfax domain embraced what are now more than twenty counties included in Virginia and West Virginia.

<sup>6</sup> That section of Pennsylvania was then considered a part of Virginia.

burgh. Colonel Frey died at Cumberland, Maryland, their headquarters, and Washington assumed the first command. But at Great Meadows, where the little force had built "Fort Necessity," they were attacked on July 3, 1754, by superior forces of Indians and Frenchmen, and in the night in a steady rain Washington and Mackay, the South Carolina leader, by agreement beat a strategic withdrawal.<sup>7</sup> On his return Governor Dinwiddie proposed another larger expedition, but his orders were that the companies to be organized should all be equal, with no officer higher than captain among them. Colonel Washington resigned at once and retired to Mount Vernon.

In the same year Washington's brother Lawrence had died, leaving a wife and small daughter. Lawrence's will made George, his favorite brother, caretaker of his estates until his daughter reached her majority, with the further provision that if his widow and daughter both died, the entire estate should go to him absolutely. George Washington was thereafter a man of means, and henceforth could devote as much time as he chose to public affairs.

In England the Government had become alarmed at the success of French arms in America, and General Braddock was now sent to Virginia with 1,000 English regulars to dislodge the French at Fort Duquesne. George Washington enthusiastically joined him at Braddock's invitation as adviser on his personal staff. But only a short distance from Fort Duquesne, where Braddock, Pa., now stands, on July 9, 1755, as they were crossing a small stream in a little clearing, volleys poured upon the close English ranks. These were shot down rapidly, and so many men and officers, including Braddock, were killed or wounded that nothing but a hasty retreat could be made. The retreat was soon a rout, and Braddock, who died four days later, had to be buried in the middle of the road to hide his

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<sup>7</sup> This event had five points of unique interest: 1. It was the first active, effective and practical cooperation of the colonies with each other. 2. The beginning of the French and Indian War, which determined that the Western territory should be permanently Anglo-Saxon. 3. The real beginning of the Seven Years' War in Europe, which changed the map of the world. 4. The beginning of a war in which Great Britain's burden of expenses was so heavy that the excessive taxes placed upon the colonies brought on the American War for Independence. 5. The first real battle of Washington's military career which gave him a place in the eyes of the world.



body from the pursuers.<sup>8</sup> Washington, who had escaped miraculously, piloted the shattered remnants back to civilization.

From then until 1757 Washington performed various duties protecting the comparatively quiet frontier, interrupting his service only with a short trip to Boston to adjust the matter of his rank and to receive a new commission from Governor Shirley, of Massachusetts, commander-in-chief of the British forces in America. In 1758 Louisbourg, Louis XIV's supposedly impregnable fort on Cape Breton Island at the mouth of the St. Lawrence River, was taken, the outlying French posts were hastily vacated, and Washington could march almost unopposed into the still smoking ruins of Fort Duquesne. In 1759 Quebec also was captured; in 1763 came peace, and England acquired thereby all of Canada, undisputed title to the West as far as the Mississippi from France, and the Floridas from Spain. Spain was recompensed with New Orleans and all that part of North America west of the Mississippi River (except Alaska, which was Russian).

In the meantime one day in the fall of 1758, while enroute to Williamsburg, Washington had stopped in at a friend's home near the Pamunkey River,<sup>9</sup> where a wealthy and attractive Virginia widow was visiting, and after meeting his fellow-guest Washington was easily prevailed on to spend the night. The following January 6th he and Mrs. Martha Dandridge Custis were married at old Peter's Church, New Kent County, Virginia. With her she brought more thousands of acres, including the "White House" in which she was born and which stood until destroyed by fire while in the hands of Union soldiers in the Civil War. She also brought Washington a handsome cash balance in the Bank of England, and two children by her first husband, John Parke and Patsy, who were to console their stepfather for his own lack of offspring.

With the coming of peace began the consolidation of Washington's and his wife's scattered properties, which had suffered somewhat from neglect during his long absences. Within less than five years after

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<sup>8</sup> A monument near Uniontown, Pa., now marks the spot where Braddock was buried.

<sup>9</sup> The house was standing in 1936 and was owned by a descendant of Robert E. Lee.

his marriage both his brother Lawrence's wife and daughter had died, and under the terms of his brother's will he thus became absolute owner also of Mount Vernon. Buildings were repaired, stock bought, fences mended; his English agents he advised in detail how they were to conduct the disposition of his produce, and his wife's cash was used to purchase still more land, part of it across the mountains in the wild country he knew so well.

In the winter he also now delighted in taking Martha to Williamsburg, the capital, in "the season." He became a vestryman in the Pohick Episcopal Church, at which he was a regular attendant. He stood for election to the House of Burgesses, and for the next fifteen years served as one of its members. He was first elected from Frederick County, the home county of Lord Fairfax, though later from his own community. In one of his first elections he did not hesitate to foot the bill for "a hogshead and a barrel of punch, thirty-five gallons of wine, forty-three gallons of strong cider, and dinner for his friends," all for only a few hundred electors in the district. All told, he was soon living with zest the varied life of one of the richest and most prominent men south of Philadelphia. He considered a visit to England, but, he wrote his friends, "I am tied by the leg and dare not even think of such a gratification."

But in England events were taking place and policies being laid down which were eventually to shatter this peaceful existence. Between the years 1763 and 1772 the five so-called "Intolerable Acts" were enacted, of which the one which perhaps affected Washington the most was the one which prohibited further settlement of the western territories, where he owned much land. The problem of "taxation without representation" also, of course, affected him closely, both as a member of the Virginia Burgesses and as a man of wealth. In 1765 Patrick Henry delivered a speech to his fellow Burgesses on this subject which grew so fervid that some shouted "Treason!" to which Henry replied hotly, "If this be treason, make the most of it!" His eloquence carried the day and also his declaration of rights, though many who heard it were aghast. Washington himself had sat quiet and undemonstrative throughout Henry's outburst. But George Mason, whose mental speculations had carried him further than Washington's, was urging him on, and in 1769

Washington himself offered at Fairfax the non-importation resolutions drafted by Mason, and subscribed his share of the estimated costs of the "association" formed at the same time.

Thereafter affairs rapidly became worse in the other colonies, though Virginia remained calm until 1772, when pacific Governor Nelson was succeeded by the tempestuous and land-grabbing Earl Dunmore. In March, 1773, the Burgesses protested roundly against the transportation of Americans to England for trial of certain crimes and had to be dissolved. In 1774 they had to be dissolved again when they protested the closing of the port of Boston following the tossing of the East India Company's tea into Boston harbor. But on this occasion they, including Washington, withdrew to the "Apollo Room" of Raleigh's Tavern, resolved that June 1st be set aside as a day of fasting and prayer, that on August 1st a Virginia convention meet to consider the situation, and that a Congress be called from all the colonies for the same purpose. On June 1st there was fasting and prayer as per schedule, and on August 1st the Virginia convention met and selected seven gentlemen, Peyton Randolph, Richard Henry Lee, Richard Bland, Benjamin Harrison, George Washington, Edmund Pendleton and Patrick Henry, to go to the First Continental Congress, to meet at Philadelphia on September 5, 1774. Quietly one day in August the last three met at Mount Vernon to set off on their momentous journey, with George Mason, who had declined to become a delegate, standing by to see them off.

There was much high language used by some of those present at the Congress, but in the end calm counsels prevailed, and after seven weeks only a respectful petition was sent to the King, resolutions taken to continue in effect the boycott of English goods which had been resolved upon in 1769, and a second Congress arranged for to meet again the following spring. Thereafter Washington returned home for another routine winter.

But in England a mighty conflict had been precipitated. The King was roused and incensed, by proclamation Massachusetts was declared in rebellion, its fishermen were denied access to the Grand Banks, every port in New England was closed, and 10,000 fresh troops were dispatched to Boston.

In Virginia at the same time, as Dunmore reported to the ministry

in England, many people were not waiting for the King's reply to the petition of the Congress; by the end of December every county was "arming a company of men for the avowed purpose of protecting their committees, and to be employed against the government if occasion required." Washington was elected by each company in succession to command it, and accepted each offer as made. In May, 1775, the state's convention quickly adopted resolutions putting the whole colony in a state of defense, four weeks later the fatal shot was fired on Lexington Green whose echoes were "heard around the world," a short time later Dunmore was a fugitive on an English man-o'-war, and the colony of Virginia was in open rebellion.

Washington himself was in Philadelphia in his militiaman's uniform on May 10, 1775, when the Second Continental Congress met, and his advice was indispensable on every sort of military topic. Ethan Allen had occupied Ticonderoga, sixteen thousand rude troops had gathered from the countryside and invested Boston, and the equipping, training, leading, and financing of such a force raised hundreds of difficult questions all of which seemed to require immediate answer. On June 17th English troops had achieved a bloody and costly victory at Bunker Hill, north of Boston.

So far the war had centered in New England, and Massachusetts apparently was in the greatest danger. But John Adams from Massachusetts knew that the only success lay in aid from the other states, some of whom were still lukewarm. Against the protests of no less a person than his own revolutionary governor, John Hancock, who wanted himself to lead the army, John Adams proposed George Washington, of Virginia, as Commander-in-Chief of the Armies of the Continental Congress.<sup>10</sup> The Congress approved the choice, Washington's commission was formally signed on June 19th, two days later he set out in what turned out to be a triumphal march through the excited New England countryside, and on July 2 he arrived before Boston.

But it was spring of the following year before he could do anything with the raw and untrained farmer boys who were his troops.

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<sup>10</sup> It is stated on the tomb of Thomas Johnson, the first Governor of Maryland, at Frederick, Maryland, that he made the motion nominating Washington.

Then he suddenly appeared on the morning of March 5, 1776, securely entrenched on Dorchester Heights, his cannon dominating the English men-of-war in Boston Harbor. To attack would have been useless, and by the 17th every Britisher in Boston had embarked and was on his way to Halifax.

During that time Washington had also been seeing things from the larger view. It had been many years since he had been in New England, but the change had been tremendous. During the discussions in the Continental Congress in the spring of 1776 which led to the signing of the Declaration of Independence, Washington admitted that his own mind had been made up to the fact, as early as these first summer months of 1775 before Boston, that the war had had to be fought, not merely to protect the country's liberties as Englishmen, but for entire independence from England.

After taking Boston, Washington wasted no time. The army was quickly marched off to New York, which would doubtless be the next point of attack, for it was open to the sea and the possession of it and the Hudson River would permit the English to cut rebellious New England away from the more lukewarm southern states. But all his preparations were in vain. Staten Island was vacated without putting up any resistance, the longer-drawn-out actions on Long Island were only a prolonged retreat before Howe's 20,000 British regulars, and in the fall, all Washington could do was withdraw to winter quarters across the Hudson River. General Howe sent a few Hessian regiments after him, but Washington on the night of December 24, 1776, crossed the Delaware in a blinding snowstorm with his remaining 6,000 men, completely surprised the Hessians at Trenton as they were celebrating Christmas Eve in good German fashion, captured almost every one of them, and on January 3, 1777, at Princeton also turned back Cornwallis and 8,000 men in a sharp engagement. Frederick the Great, in Prussia, when he heard of the campaign, enthusiastically said it was one of the finest he knew of. But the enlistments of the men at Trenton had expired on the first of the year, and Washington had had to pledge his private funds and appeal to the men personally to stay with him until the business could be finished.

For the spring the British were collecting two additional forces,

one at Oswego in western New York to move across-state to Albany, one at Quebec to move down Lake Champlain and join the first, with Howe from the south to come up the Hudson River to meet them in the fall. But in that summer the British were to learn what they might have learned two years earlier at Boston, and what in the end was to lose them the war. The two forces from the north and west were harried by hastily organized bands of local countrymen until St. Leger from the west finally returned in haste to his base at Oswego, and at Saratoga Burgoyne finally surrendered his remaining 6,000 men on October 17th to Benedict Arnold's 20,000.

Howe in the meantime in July had moved, not north, but south, and finally succeeded in taking Philadelphia at the end of November. But at Germantown Washington showed him he could advance no farther, and Howe thereafter decided to make the former rebel capital his headquarters for the winter, to the delight of the wives and daughters of the Loyalist inhabitants who had remained behind when the Continental Congress had fled to Lancaster.

In the long run Howe's capture of Philadelphia was to prove a mistake from the English point of view. But the temporary effect was tremendous. That winter was the low point of the Revolution. The Congress was in flight, Washington's men scattered rapidly with the coming of cold weather, and the few thousand who stayed with him at Valley Forge till spring had to huddle barefoot, unfed, and unroofed before pitiful fires which guttered in the wet snow.<sup>11</sup> Washington himself was being criticized for his "Fabian tactics" of steady retreats, and some of his best officers gathered in the "Conway Cabal" to unseat him and put someone else, probably Gates, in his place. He survived the storm, generously aided by his friends, but it was as much a recognition of the country's sore straits as of his towering gifts that the Congress that winter voted him all but dictatorial powers in the further management of the country and the remnants of his army.

But hope at last came towards spring. France, which had for several years been giving secret aid in money and supplies, now came into the open and declared war on England, her traditional enemy,

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<sup>11</sup> Washington and his army were at Valley Forge from December 19, 1777, to June 19, 1778.

and made a defensive alliance with the struggling American states. A few quixotic Frenchmen, among them the Marquis de Lafayette, had already come over at their own expense and given invaluable aid to the struggling American efforts. But to have France herself in the war would mean not only men and further money and supplies, but better than all, it would dispute England's hitherto unquestionable mastery of the seaways, without which the evacuation of Boston or the New York or Philadelphia campaigns would not have succeeded so easily. At the same time came other French officers, Kosciusko and Pulaski from Poland, and Baron von Steuben from Germany, who could give the raw country levies that sharp discipline which General Washington himself, who had led troops for over half his life, had never known how to give them.

With such a situation the English, under General Clinton, who now succeeded Howe, could only withdraw again from Philadelphia and reconcentrate at New York. But the troops had to go overland, with Washington's army almost as great as their own hanging on their heels ready to overwhelm them. At Monmouth Court House in New Jersey on June 18th Washington might have done so, except for the treachery of the English adventurer, General Charles Lee, who was second in command and ordered a retreat just when a charge on the exposed British flank might have clinched the day. Washington dashed up, his wrath terrible to see. His passionate temper he almost never let out of its iron bounds, but now it burst forth in a torrent of invective which branded Lee forever. The troops he rallied, but too late, for that night Clinton withdrew leaving his wounded behind him.

In April, 1779, cautious Spain, under the skillful suggestions of Franklin and Vergennes in Paris, joined France and America against England, a combined fleet of the two powers attempted a joint invasion of the little islands, John Paul Jones and other doughty American privateers harried English shipping until ocean insurance rates were prohibitive, and for a time it looked as though the entire Continent would combine against her, who had this time no Marlborough to sweep her armies to victory across all Europe.

In America, however, Clinton that summer again struck from the sea and took Charleston in South Carolina, whose seaboard Loyalists welcomed him and made his stay pleasant. Gates, one of the heroes

of Saratoga, was sent south for another "Burgoyneade," but at Camden in June Cornwallis routed him utterly. Washington still had to sit helpless before New York, his troops forced to live off the country as best they might. That summer, too, one of his closest personal companions and very best generals, Benedict Arnold, succumbed to the entreaties of his young Loyalist wife and the feeling that he had been slighted by Congress, turned traitor, and only just failed to hand over West Point to the enemy. Washington sobbed like a child and was heard to pace the floor of his room all that night, though he gallantly sent a note as soon as he was sure of the fact to advise Mrs. Arnold that her husband had made good his escape to a British man-of-war.

But now at last the tide turned, and again for the same reason as at Boston in 1775 and at Saratoga in 1777. After his successes on the seacoast, Cornwallis in the South attempted to move further into the Carolinas. But at King's Mountain, on October 7, 1780, twelve hundred of his men were wiped out in a running fight with hardy mountaineers hastily brought together from as far away as Tennessee and Kentucky, and gradually Cornwallis withdrew again, with irregular bands always on his flanks or wiping out his outposts. Finally he was cut off at Yorktown, in Virginia, and there Lafayette by land and de Grasse with a providential French fleet by sea bottled him up. It was time for the master-stroke, and after a short feint before New York, Washington dashed four hundred miles across country with 2,000 Continentals and 4,000 Frenchmen to close the vise. An English fleet appeared once on the horizon, but withdrew again at sight of the more numerous French spars, and a few weeks later, on October 19, 1781, Cornwallis surrendered, full of admiration for the way Washington had outdone him.

Yorktown was the last great operation of the war, and everyone knew it. In England, Lord North, when he heard of it, cried out, "Oh, God, it is all over! It is all over!" But it was a bitter triumph for General Washington. John Parke Custis, his remaining stepchild (Patsy had died a few years after he had married her mother), had recently become his aide-de-camp, but had been so ill at Yorktown that his men had had to support him to see Cornwallis surrender, and a few weeks later he was dead. Washington had anx-



iously watched over the boy through rakish days at King's College (now Columbia University) until he had married into the wealthy and prominent Calvert family in Maryland; now he could take the two youngest of his stepson's children to raise.

Sadly, therefore, Washington returned north to continue the stalemate about New York. His Newburgh headquarters overlooked the nearby Hudson River. He could not yet honorably resign, for he alone now had the unbounded confidence of all the troops and of all men. The Continental Congress had shrunk till it hardly ruled even in name, and Washington at one time even took it upon himself to write a personal letter to each of the governors of the thirteen states urging them to take steps to rehabilitate the Congress and to take steps to modify the ineffectual Articles of Confederation. One of his most trusted officers suggested in veiled but unmistakable language that he permit the army to proclaim and crown him as king. Washington rebuked him and forbade the mention of the subject again, but a real necessity had provoked the proposal, and in March, 1783, only the dignity of his own personal appeal prevented insurrection among many of the unpaid soldiers and officers.

But at last in September, 1783, the peace treaty arrived, the last English forces sailed forth from New York harbor on November 25th, and the treaty was finally ratified on January 4, 1784, by a Congress which had sunk so low that it was four months before a quorum sufficient to consider the subject could be brought together. At Fraunce's Tavern in New York, Washington and his officers joined in a dramatic farewell dinner which left him deeply moved, and on December 23, 1783, he rode to Annapolis, and simply but with reverence surrendered to Congress the sword he had taken from it so diffidently, and defended so ably for eight long years.

Gratefully now he retired to his beloved Mount Vernon, to his wife, and to the care of John Parke Custis' two youngest children. Fox-hunting was over for him, but quiet and peace was harder than ever to achieve. Again he had to begin at the beginning to restore his estates, inspect buildings, buy new stock, and plan paying crops. Prices were better for a time, but he had to sell a portion of his many acres to raise cash for the others, and even his claim against the Government for more than \$64,000 for his actual expenses during

the war (he had never drawn any pay during his eight years of service) he disposed of for \$3,500 in immediate cash.

Socially also the demands on Mount Vernon were constant. Visitors from everywhere stopped in to see the great man, whose name was now a byword throughout the world even to a greater extent than Dr. Franklin's. Gifts came from everywhere, including a brace of foxhounds from Lafayette which turned vicious and killed his deer; the King of Spain sent a pair of jacks and jennies, among the first in the country, and Washington took great interest in breeding them. Painters came to paint his portraits and grew rich from their sale, including Gilbert Stuart, who came twice to America from England, and is said to have made near four hundred likenesses. Letters poured in from everywhere, all to be answered personally in the evening. It seemed as though everyone was naming him as trustee or executor for his widow and children, and such services could not be denied. Harvard, Yale, and Brown conferred honorary degrees on the great man, and in 1788 William and Mary College named him its Chancellor, an office which he retained until his death. Dancing he had given up, but social gatherings still took him, and as one visitor noted, in the evening after a good dinner and a glass or two of champagne he could still be gay and tell good stories.

Public affairs Washington tried to avoid, but unsuccessfully, for his wide-spread interests, his prominence, and his habits of thought were too manifold for him to escape them. Again he served as a Judge of the Fairfax County Court. In March, 1785, at a conference at Alexandria with commissioners from Maryland and Virginia to discuss the languishing trade between the two states, Washington suggested his ideas in regard to a canal across the Alleghenies to connect the headwaters of the Ohio and Potomac Rivers, and had the delegates over to Mount Vernon for several days, but the problem was too large and the conference adjourned with only a few recommendations for reciprocal commercial and tariff arrangements. The Maryland legislature next invited delegates from all the thirteen states to another conference, which met at Annapolis in September, 1786, though delegates from only five states appeared, and Maryland's own representatives were absent. But again it was found that the basic problem was too large for those present to ad-

just, that the question was national, not local, and that a new conference should be called for 1787 to meet in Philadelphia.

The proposal for the Philadelphia Convention was at first not everywhere accepted with warmth. But in that very year, in western Massachusetts, Shays' Rebellion took place, and thereafter the New England states, except Rhode Island, delayed no longer and chose their delegates along with the other states. Washington himself was aroused, for the ideals for which he had risked his life and his fortune hung in the balance, and he wrote warmly to a friend: "It was but the other day that we were shedding our blood to obtain the constitutions under which we live, constitutions of our own choice and making, and now we are unsheathing the sword to overturn them. The thing is so unaccountable that I hardly know how to realize it; or to persuade myself that I am not under the tension of a dream."

Washington himself, although elected as a delegate to the Philadelphia Convention, was not anxious to go, for he had already begged off of an invitation to the same city to attend a meeting of the Society of Cincinnati, the aristocratic American Legion of that day, of which he was president. Nevertheless he was prevailed on by his friends, and on the appointed day he and the other Virginia delegates arrived in the city. The trip had been like a triumphal progress, especially for Washington, for whom bells pealed along the way, and at Chester he was met by a welcoming committee of prominent Philadelphians.

Most of the other delegates had not yet arrived, and the precise and methodical Washington chafed at the delay. His own thoughts he repeated in a joint meeting with the Pennsylvania delegates: "It is too probable that no plan that we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people we offer what we ourselves disapprove, how can we afterward defend our work? Let us raise a standard to which the wise and the honest can repair; the event is in the hands of God."

At the very outset of the Convention Washington was unanimously elected chairman. Washington graciously accepted, though in a short but dignified address he begged the indulgence of those present for his lack of knowledge of parliamentary practices. Thereafter, throughout the long summer, he presided over the long and often tedious debates with impartial fairness, never once forsaking his posi-

tion to address the delegates on any matter before them for discussion. Once during a ten-day recess he and Robert and Gouverneur Morris, his old friends and now his private bankers, went fishing in the nearby Delaware River, which he had crossed ten years before in a snow-storm. Not till the very end did he obtrude his own thoughts, when on September 17, 1787, just as the final vote of approval was to be taken, he rose and feelingly urged on the delegates his personal conviction that it would be better to have a larger House of Representatives than had originally been decided upon, with one representative for every 30,000 inhabitants in each state rather than for every 40,000. Coming from him the proposed change was made without further debate, though there had previously been much acrimonious discussion of the subject. Thereafter, the delegates filed forward and each signed their names, all but Elbridge Gerry, from Massachusetts, and Washington's two close friends and fellow Virginians, Governor Randolph and George Mason. The papers of the Convention were officially entrusted to Washington's safe-keeping as the chairman of the Convention, and the delegates then filed forth into the open air, with Washington the last, to make sure that no single scrap of paper be left behind on the floor or on the desks to betray to an inquisitive public the many private schisms and doubts which may have been erased from the delegates' minds in their sixteen weeks' secret conclave.

After signing the Constitution Washington went back to Mount Vernon and took no active part in the fight for ratification. Nevertheless, "I never saw him so keen for anything in my life as he is for the new scheme of government," a mutual friend who saw him about this time wrote Jefferson, in France, and this fact was the most far-reaching personal influence in favor of ratification. In the far-away New Hampshire ratification convention the father of Daniel Webster gave as his principal reason for supporting the Constitution that George Washington had said it was good. By the early summer of 1788 ten states had ratified, which was more than enough to put the Constitution into effect, and that fall in each state Presidential Electors, Senators and Representatives were elected.

The Electors met thereafter in each state and sent their sealed ballots to New York, to the Congress which finally gathered on April

6, 1789, and while there had been no official candidates discussed beforehand, it was generally accepted that Washington had been chosen. When the ballots were opened it was found that he had been chosen unanimously, with John Adams as Vice-President, and resolutely and straightforwardly Washington accepted this latest tribute to him by his country. The task he knew would be difficult, but the moment was critical, and though his own affairs were not yet entirely in order (he had to borrow \$2,500 to pay his immediate expenses just before he left Mount Vernon), and his Spartan mother, whom he visited at Fredericksburg before he left, was dying of a cancer,<sup>12</sup> he arrived at New York on April 27th, delayed four days by the wild ovations which greeted him everywhere along the way. On April 30th he was solemnly sworn into office on the open balcony of Federal Hall in Wall Street by Chancellor Robert R. Livingston, of New York,<sup>13</sup> and then, much moved and in a husky voice, inside the hall he read his message before both houses of Congress. "The preservation of the sacred fire of liberty," he said, "and the destiny of the republican model of government, are justly considered as *deeply*, perhaps as *finally*, staked on the experiment intrusted to the hands of the American people."

First of all, however, dignity had to be created, for for lack of it the old Continental Congress had died. Washington henceforth made no more calls, but received callers at appointed times. When he appeared in public he was dignified, whether walking with his secretaries along the Battery or riding horseback in the park. His state appearances always called for his great coach-and-six with glittering golden cupids and outriders, and woe betide his groom one day when the President came forth for an affair of state and found the horses' hooves unpolished!

Thoroughly but cautiously he went to work. A complete government had now to be established within the bounds set by the Con-

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<sup>12</sup> She is reported as having said: "You will see me no more. My great age and the disease that is rapidly approaching my vitals warn me that I shall not be long in this world. I trust in God. I am prepared for a better World, but go, George, fulfil the high destiny which Heaven appears to assign to you. Go, my son, and may Heaven's and your mother's blessings be with you always."

<sup>13</sup> Livingston was at that time Grand Master of the Masons of New York, of which Order Washington was a member.

stitution. The Legislature already existed, but in the Executive Branch only the President and Vice-President, with none of the great departments which would be necessary, and in the Judicial Branch there was as yet no one and nothing. Without each of them properly established and with men of judgment and probity appointed to them the carefully worked out checks and balances of the Constitution would fail to function properly and there might again be chaos. The men he most consulted were Hamilton, whom he had fathered ever since he had been one of his secretaries in the Revolution, and the scholarly Madison, whose trained mind had done the most to frame the Constitution whose provisions they were now seeking to put into practical operation.

By September 25th the three great departments had been organized, the State Department in charge temporarily of John Jay until the arrival in March, 1790, of Thomas Jefferson from France, where he was rapidly becoming almost as famous as Franklin before him; the versatile and brilliant Alexander Hamilton as Secretary of the Treasury, and General Henry Knox, the old soldier, as Secretary of War; Edmund Randolph, ex-governor of Virginia, became his Attorney General. Hamilton, the youngest, was only thirty-two, Jefferson, the oldest, was forty-six. In the House was James Madison, on whom he could rely to direct things; in the Senate was Oliver Ellsworth, of Connecticut, on whom Washington leaned. The courts had also been established, upper and lower, with John Jay the first Chief Justice of the Supreme Court. All of them were good men well chosen, and though young, all were to serve their country well. By October, Washington could make a four weeks' tour through New England as far north as Portsmouth, N. H., which turned out to be one long triumph of popular enthusiasm for the hero of the Revolution and the nation's new President.

Already, however, a tiny seed of opposition had been planted. In New York many of the great Livingston family had been enthusiastic in their praise of the new government, but none were appointed to office. In Pennsylvania the party of Benjamin Franklin had disintegrated in spite of its patriarch's great name, but his young grandson, Benjamin Franklin Bache, who was just beginning an ill-starred editorial career, also might have been found a place and was not.

Soon these and other unplacated groups were to be heard from in noisy opposition.

After the government had been organized, the next immediate problem was that of the currency and the national and state debts left over from the war, both at home and abroad. Here Hamilton was listened to, a bill for the new Federal Government to assume all the state debts put through Congress, and then they and the national debt funded at once out of taxes which, under the Constitution, the national government could for the first time levy. Many holders of the formerly discredited debts were suddenly made rich by this, and the first open cry of opposition arose.

Finally establishing the national currency should have facilitated foreign affairs, but in France a hurricane had burst which suddenly upset all plans. Only six weeks after Washington's inauguration the King and Queen of France were imprisoned by their subjects and an ostensibly republican form of government established. From America a cry of sympathetic approval at first went up. But as time went on it became plain that the French Revolution was not like the American, the guillotine began to take lives ruthlessly, the armies of the Revolution in 1792 began to spill over the country's borders, the King and Queen were executed in 1793, the revolutionists began to kill each other, and finally terror reigned. Many in America continued to shout approval; but more staid men were horrified, Washington among them. The issue was forced when the brilliant and charming Genet came over in April, 1793, from France, as ambassador officially, but principally to enlist American aid. His reception at Charleston was overwhelming, Jacobin Clubs were organized everywhere, and his trip north was like a royal progress, till in Philadelphia he all but flouted Washington himself. Washington, in view of the popular sentiment, had to bide his time, but when Genet, at a time when he was clearly in the wrong, announced superciliously that he would appeal to the American people over their President's head, Washington merely published the absurd correspondence, and in the wave of popular feeling which followed, Genet could be dismissed easily,<sup>14</sup> and a more discreet French ambassador, Fauchet, obtained in his place.

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<sup>14</sup> Genet, who knew he faced the guillotine should he return to France,

That summer also the threat of armed rebellion broke out in western Pennsylvania over the new Federal tax on whiskey, one of the few products of the backwoods farms which could profitably be marketed in the East. Washington finally had to call out the Pennsylvania, New Jersey, Maryland and Virginia militia and start for the region, with Light Horse Harry Lee in command, though at his mere approach the "rebels" dispersed without a shot being fired.

So far everything had fallen out superficially as planned, but each issue as it had been met had taken its toll of friends. Hamilton had prevailed with Washington on the issue of the currency, and had succeeded in obtaining the establishment of a national bank to handle the government's moneys, though Madison and others had objected that the Constitution had said nothing about Congress issuing national bank charters. Gradually Jefferson, and Madison with him, grew further and further away from Washington and his friend Hamilton. In handling Genet, Jefferson had been much too lenient and Washington had finally conducted the entire matter himself; Jefferson shortly thereafter resigned. Hamilton also had to resign his post in the Cabinet at about this time to recoup his fortunes as a lawyer in New York City; he had less than \$500 to his name when he resigned, and contrary to reports of his enemies had never made a penny of profit while others were waxing rich out of his fiscal measures.

Finally Washington, whose ideal had always been a government without party, found parties within his very cabinet, and the country behind it split on the same lines: those for his own French policies and the Hamiltonian fiscal measures called themselves Federalists; those who, like Jefferson and Madison, objected to the "usurpations" of the fiscal measures and the "undemocratic" French policy, called themselves Democrats or Republicans. The latter were organizing and combining out of the old Irish, German and French social clubs into the potent Tammany Clubs of New York City founded by Burr, and men like young Benjamin Franklin Bache and his Philadelphia paper, the blatant *Aurora*, were their mouthpieces.

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chose instead to remain in America. He married the daughter of Governor George Clinton, of New York, and became a farmer. Tradition has it that he later regretted the choice he had made.



Washington had hoped to retire from office honorably in 1793, but in 1792 he knew he would have to allow himself to be re-elected again. His name was still potent and he was again chosen unanimously by the Electoral College. But Vice-President John Adams had a harder time of it, with George Clinton, of New York, a rival, and in the spring of 1794 in the new Congress the Federalists had a minority of twenty in the House of Representatives, and only a bare majority in the Senate. It was to be a hard four years, and in spite of his personal popularity Washington was to declare later that during his second term he found himself charged with every offense a man was capable of committing.

Foreign affairs were to disturb Washington's second administration as they had the first. In his mistrust of Jefferson's brilliant but to him erratic mind Washington had sent John Jay to England, and in 1795 Jay returned with a treaty. His proposed Spanish treaty in 1785 had raised a storm, but this one with England promised to raise two storms, and Washington at first hesitated to sign it, though the Senate had reluctantly given its approval. The only things it clearly promised were the surrender of the forts at Detroit and elsewhere in the West which the English still held in violation of the peace treaty of 1783, and English restitution for slaves carried off from the South during the Revolution. But the vitally essential trade concessions seemed very trivial, and on the burning questions of English impressment of American seamen and the stopping and searching of American vessels for contraband (England and France being at war), absolutely nothing was said. The terms of the treaty leaked out, the French party was furious, and perhaps to pique them, perhaps out of anger, Washington finally put his name to it.

In practice the treaty worked out better than had been expected, but in the struggle Washington had had to lose another friend, this time apparently a deliberate sacrifice on his part. Edmund Randolph, then his Secretary of State, had felt that the English treaty would be in violation of the French Treaty of Alliance of 1778 and other obligations due France, and when vague reports reached Washington of mysterious conversations of the year before between Randolph and Fauchet, the French ambassador, Washington bluntly placed the Fauchet letter before Randolph and let

the proud Randolph resign without giving any explanation of the veiled insinuations.

A few weeks later (October, 1795) Thomas Pinckney sent from Spain a treaty which gave the eastern merchants a few concessions in Spanish ports and opened the Mississippi River to western commerce, with the right of deposit for three years at Spanish New Orleans. The West would have liked to have had New Orleans outright, and New England shippers howled that they were being "sold out" for the benefit of the western wilderness. But somehow again the treaty was ratified and with the return of trade, a restored currency, and war in Europe, America suddenly found prosperity returning at full tide.

The next year was thankfully quiet except for the ever more vigorous newspaper attacks led by Bache. On September 19, 1796, Washington published a Farewell Address to the people, written for him largely by his old friends Hamilton and Madison, announcing that he would not be President again, that he felt that two terms of four years each was enough for any one man to be at the head of affairs under a republican form of government, advising the people to eschew temporary ends in favor of a strong and unified national government, their own in spirit and in fact, and to this end to avoid foreign influences and entanglements for which they were not ready and which could only divert them from their true mission. That fall his Vice-President, John Adams, was elected to succeed him as President, with Thomas Jefferson as Vice-President, and in the spring Washington took his simple leave before a silent crowd which filled the streets before his house as he drove away, accompanied by members of his household and young George Washington Lafayette. At the inauguration ceremonies for President Adams men noted that Washington was still the central figure, and until he rose to congratulate the new President no one dared to break the spell which was on them all.

Happily perhaps for the man who had done so much for his country, Washington did not outlive the tribulations of President Adams' administration. In those years all the pent-up wrath of the anti-Federalist Democrats was heaped on his successor's head, who had not the ability to handle men as Washington had had, and whom the shameful "X. Y. Z." affair brought to the brink of war with France in 1798. For this again Washington reluctantly agreed to put his services at

the disposal of his country as commander of its army, though only on condition that Hamilton, his old and trusted friend, be his immediate second in command. But Adams mistrusted Hamilton, whose influence over the members of Washington's old Cabinet was so great that Adams had to ask half of it to resign, and whose thirst for military glory would be the chief beneficiary of the war. Adams accordingly gave up the thought of war, sent Oliver Ellsworth and others to France to patch up matters, and Washington could again retire in peace to his beloved Mount Vernon, where he lived for hardly more than half the many years it had been his.

And so he could also again ride about his fields in the morning with an umbrella fastened to his saddle to keep off the sun, sit with his friends in the afternoon, write his many letters in the evening and see his wife's beloved grandchildren about him. On February 22, 1799, his sixty-seventh birthday, Nellie Custis, his favorite, was married to his favorite nephew, Major Lawrence Lewis, and he himself in his old buff and blue uniform of the long-past war gave the bride away. On December 12, 1799, he caught cold riding about his estate in a snowstorm, the next day the doctors bled him copiously, and on the 14th his dying words were: "I die hard, but I am not afraid to go. It is well."

When his will was opened it was found he had made bequests to forty-one relatives, including nine children, relations of Mrs. Washington and himself whom he had reared; he also had freed his more than two hundred slaves and had made provision for those who could not care for themselves. His ashes were first laid in the family vault near the Mount Vernon he had always loved so well, and next to them in 1802 were laid those of his beloved Martha. Thirty years later the remains of both were removed to the handsome tomb nearby which is visited today by thousands who come each year to Mount Vernon.

The news of Washington's death took four days to reach Philadelphia, then still the nation's capital, and John Marshall, a member and later Chief Justice of the United States, announced the news to the hushed Congress. On receipt of the news the flags of many nations were dipped in his memory, including the proud Union Jack on British frigates in the distant Thames. Today every state in Amer-

ica but Wyoming and Delaware, and every country in Europe, has a street, a village, a town, a city or a county named after him, and in 1932, on the two hundredth anniversary of his birth, the event was celebrated in every part of the world; in the harbor of war-torn Shanghai the Stars and Stripes fluttered that day at the mastheads of British, French, Italian and Japanese ships.

His old companion in arms, Henry ("Light Horse Harry") Lee, the father of Robert E. Lee, shortly after he heard the news of Washington's death, delivered the memorial address before both Houses of Congress in a Philadelphia Lutheran church, which contained the sincere estimate of his old friend, one which has struck most deeply into the minds of every succeeding generation of Americans: "*First in war, first in peace, first in the hearts of his countrymen.*"

#### JAMES MADISON

James Madison is known as the "Father of the Constitution," a title which more nearly belongs to him than to any other one member of the Philadelphia convention. It was Madison who led in the major movements which preceded the calling of the Constitutional Convention, and no one was more active or influential in its actual making on the Convention floor. From a historical standpoint also, his daily record of the proceedings of the Convention furnish the only complete report of the Constitutional Convention in existence.

Madison was a citizen of Orange County, Virginia, though he was born on the estate of his maternal grandfather, at Port Conway, on the Rappahannock River in King George County, Virginia. His mother was visiting her father, Conway by name, a leading Virginia tobacco grower and exporter, when the future statesman was born on March 16, 1751. The mother and her first-born returned to the Madison estate of Montpelier, a tobacco plantation of 1,800 acres and the largest in Orange County, near Orange, and it was there James Madison lived all his life.<sup>15</sup>

Young James Madison was prepared for college by Thomas Martin, a young Princeton graduate, rector of the local Episcopal Church and a brother of Alexander Martin, one of the North Carolina dele-

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<sup>15</sup> The James Madison Memorial Bridge across the Rappahannock River

gates to the Constitutional Convention in 1787. Young Madison attended the College of New Jersey, at Princeton, instead of going to the College of William and Mary as did most of the young Virginians of his day. The influence of Martin, his tutor, and conditions of health at Williamsburg at that time no doubt influenced the family to send him to New Jersey.

Madison was an indefatigable worker in college, completing two years of college work in one. In doing so he injured his health, and his delicate constitution never fully recovered from it.

His roommate at Princeton as a freshman was Gunning Bedford, of Philadelphia, later one of his confrères at the Constitutional Convention. Other students then in Princeton who later became famous were the brilliant Aaron Burr, whose father and grandfather were presidents of the College of New Jersey (now Princeton University); Henry Lee, known in history as "Light Horse Harry," the father of Robert E. Lee, and William Bradford, who succeeded Edmund Randolph as Attorney General of the United States. While at Princeton, Madison was one of the founders of the Whig Society, a college organization still in existence in which many great graduates have held membership, including Woodrow Wilson, the only Princeton man beside Madison who ever became President.

When Madison completed his college course, he returned for a year of graduate study in Hebrew and law. After leaving college, he returned to Virginia and acted as a tutor to his several younger brothers and sisters. He was a lover of Nature and often walked alone in the woods with telescope and microscope in hand, learning Nature's varied languages through her visible forms. Later in life he studied law, but never practiced it as a profession.

He was more nearly the English type of statesman than any of our great leaders, for his life was early dedicated primarily to statecraft. As a student in college, he was an insatiable bookworm who eagerly devoured every bit of historical fact available, and his mind became steeped in the accumulated political ideas and social wisdom of the ages.

near his birthplace was opened in 1934, the memorial address being delivered by R. Walton Moore, Assistant Secretary of State in the administration of Franklin D. Roosevelt. A few miles across the river from Fort Conway lies the Garrett farm, where Booth, the slayer of President Lincoln, was captured on April 26, 1865.

The first public service performed by Madison was as a member of the Committee of Safety, in 1774, an organization which sought to secure the rights of the colonies before the question of independence arose. When the convention of notables met at Williamsburg to write Virginia's first constitution, in May, 1776, young Madison was one of its able young members. He was only twenty-five years of age but mature in judgment and learning, although not a conspicuous member because of his youth and lack of experience.

Madison won a place in the first Virginia House of Delegates, which was his first political ambition requiring an appeal to the electorate. He was not a figure to appeal to the masses, and his opponent made political capital out of the fact that he was the son of a rich planter who had refused to buy punch for the voters, which even the austere Washington felt compelled to do. He was chosen by the legislature, in 1778, to serve on the Executive Council, the Virginia Senate of that day, where he served with distinction.

Madison's next public service was as a member of the Continental Congress, where he served from 1780 to 1783. There, in company with Hamilton, of New York, and Oliver Ellsworth, of Connecticut, he worked out an amendment to the Articles of Confederation to permit a national tariff, which Rhode Island killed after all of the other states had approved it. At this time he also put forward in the Congress a plan of national taxation, based on the population of the states, whereby the Negro population would be counted on the basis of five whites to three colored, which also failed of adoption.

When he completed his constitutional limit of three years in the Continental Congress, he went back to Virginia and served for the next two years in the Virginia legislature, where he was a leader in the plan of Jefferson for the final transfer of the Northwest Territory to the United States, and in the enactment of laws which gave religious freedom to Virginia.

He was one of the twelve men who gathered in the historic trade conference at Annapolis, after the previous meeting at Alexandria also had been called largely through his influence. The resolutions submitted at Annapolis were read by Hamilton, but

Madison was equally responsible for their authorship. He was serving for his fourth time in the Continental Congress when the Constitutional Convention met at Philadelphia. He was then the great man in Congress, and towered among the small group which composed it.

The part played by him in the making of the Constitution cannot be overestimated. It was he who, in a letter to Jefferson, a few months before the Convention met, first outlined the plan for the Constitution as presented by Governor Randolph at the opening of the Philadelphia Convention. Madison and his Virginia associates were on hand May 14th, when the Philadelphia Convention was scheduled to open. But there was no quorum present, and the Virginia and Pennsylvania delegations met each afternoon for several days at the Queen's Tavern and put in final form the plan offered by Randolph when the Convention finally opened on May 25th, eleven days after the time fixed for its opening.

He performed the twofold task of actively taking part in the making of the Constitution, and at the same time serving as the unofficial reporter of what occurred during its secret sessions. Many of the speakers aided him by supplying him with written copies of their speeches. He was not absent from a single session, and when the adjournment came each day at three in the afternoon, Madison hurried away to his room and wrote out in full his notes of the day's proceedings.

In addition to keeping the invaluable record of the Convention, the following impressive list of direct contributions to the Constitution, doubtless the greatest by any single delegate, may clearly be ascribed to Madison:

The power of the Federal Government to grant copyrights and patents for inventions; to dispose of the public lands and provide temporary government for them; to acquire, with the consent of the States, lands for Federal forts, arsenals, etc., and to regulate intercourse with the Indians; the clause conferring exclusive jurisdiction in Congress over a seat of Government, when one should be chosen; the article specifying how amendments might be made; he favored election of the President by popular vote, and accepted as approximating this end the intermediate agency of the electoral college which

Wilson suggested (it proved at the first election to be only a vehicle for registering the public will, and has never been anything else); upon Madison's motion, a member of Congress was made ineligible for appointment to an office created, or the emoluments of which had been increased, during his term of Congressional service.

He also assisted in putting the final touches to the Constitution, being a member of the committee on style and revision, the last one appointed by the Convention. His colleagues were Johnson, Hamilton, Gouverneur Morris and King, all college men, selected because they were the most polished scholars and the best masters of the English tongue in the Convention.

When the fight for ratification arose, Madison was one of the giant figures who aided in making it a success. He wrote twenty-nine of the eighty-five papers contained in the *Federalist*, the great defense of the constitutional system prepared by Hamilton, Madison and Jay, and in Virginia he greatly aided in the success of its hard-fought campaign for ratification. On the floor of the Virginia Convention he was the master mind who met with cold logic the oratorical outbursts of Patrick Henry, the leader of the opposition. It proved a great humiliation to the eloquent Henry to be outvoted and defeated in the end by the forces of the diminutive and modest Madison, who won his victory by ideas and not by words.

He wanted to be one of Virginia's first United States Senators, and should have been so rewarded. But the followers of Patrick Henry, who controlled the Virginia legislature, chose Richard Henry Lee and William Grayson, both of whom had opposed Madison in his fight for ratification. Madison's own congressional district was changed to aid James Monroe to defeat Madison for a place in the first House of Representatives, but the voters rallied to Madison, who was elected and re-elected during the entire period of Washington's administration as President. He, who was the leader in the House of Representatives, became a much greater figure as a Congressman than he would have become as a member of the Senate, which met in secret session during five of the eight years Madison was in Congress.

Madison, the "Father of the Constitution," was also the father of



its first ten amendments, which were closely modeled after similar amendments proposed in the Virginia ratification convention. He was also the leader of the House in obtaining the enactment of our first tariff law.<sup>16</sup>

He, after eight active years as a great leader in Congress, broke with the Federalist Party over the Jay Treaty and definitely allied himself with the rising forces of Jefferson. He retired from active political life and at first withdrew to the country estate of his aged parents, which was also his own home during their lives, but one year later again became a member of the Virginia House of Delegates. He sponsored the Virginia resolutions of 1798 which advocated nullification by the states of the Alien and Sedition Acts, which had been passed by the Federalist Party in Congress during the administration of John Adams. Patrick Henry, who had opposed Madison in his fight for ratification of the Constitution, had since become a staunch and vigorous follower of Hamilton and was elected to the Virginia legislature on a platform opposed to that of Madison. But Henry did not live to take his seat, for his death occurred in June, 1799, a few months before that of Washington, who had persuaded him to return to the Virginia legislature expressly to oppose Madison's fight against the Adams administration.

Washington and Madison, who had once coöperated so closely, were now politically as far apart as the poles.<sup>17</sup> The day before his death, Washington wrote two letters: in the one he spoke in critical terms of Madison and his notions of government; in the other he wrote most affectionately to Hamilton, whose political views had remained substantially his own.

The full text of the extremely "states'-rights" Virginia Resolutions of 1798, as drawn by Madison and adopted by the Virginia Legislature, are given at the end of this sketch.

When Jefferson became President on March 4, 1801, Madison was appointed Secretary of State, where he served ably and untiringly during Jefferson's entire term as President. But while many great

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<sup>16</sup> Madison, in a letter written in 1828, argued that the right to enact tariff laws was one derived from the constitutional provision for the regulation of commerce rather than the provision for raising taxes.

<sup>17</sup> Madison had declined a place in Washington's cabinet as well as an ambassadorship to France.

problems arose for the State Department to handle, including the Embargo Act and the Louisiana Purchase of 1803, Jefferson, like Woodrow Wilson, was largely his own Secretary of State, and Madison's part in the government was rather as the industrious and informed administrator than as a great statesman in his own right.

He was a great contrast to Jefferson, his dear friend, neighbor and political teacher. Jefferson was six feet, two inches tall, fair, angular, talkative and philosophical. Madison stood five feet, six inches, modest, retiring, scholarly, and more logical than his great exemplar and neighbor. He had a deeper sense of humor than Jefferson, who had practically none, but each was of much help to the other. Mrs. Madison served as first lady of the land when Jefferson was President, Jefferson's wife having died many years before.

Jefferson, at the end of his second term, chose his diminutive Secretary of State as his successor in the White House. But Madison was not a success as President. The War of 1812 was soon on and it was a case of the scholar in politics, of a man unfitted for leadership when blood and iron were needed. His flight from Washington over into nearby Virginia when the British burned the Capitol and the White House only emphasized his helplessness in a war-time crisis.

Madison as President had as his Vice-Presidents two former enemies to the ratification of the Constitution; George Clinton, of New York, was the first and Elbridge Gerry, of Massachusetts, the second, both of whom died in office. Clinton had also served as Vice-President during the second term of Jefferson.

After leaving the Presidency to James Monroe, who had served as his Secretary of State and also for a time as his Secretary of War, Madison retired to his Virginia estate, where he lived in quiet retirement the nineteen remaining years of his life.

Two great public services were rendered by him after leaving the White House, one when he served as a delegate to the Virginia Constitutional Convention of 1829, presided over by his friend Monroe, then also a retired ex-President, and again as rector of the University of Virginia, in which he succeeded Jefferson after the latter's death in 1826. He not only devoted much attention to the needs of Virginia's growing young university, but aided it in his will

by leaving it his large library, which, however, was destroyed by fire many years later.

Madison was a bachelor until forty-three years of age, though not entirely by choice. While serving in the Continental Congress, he was engaged to a daughter of William Floyd, one of the New York signers of the Declaration of Independence, a blythe and debonair maiden who forsook him for a less sedate husband who was soon lost in obscurity. But he, when forty-three years of age and a member of our first House of Representatives, was introduced in Philadelphia by Aaron Burr to Mrs. Dolly Payne Todd, the twenty-six year old widowed daughter of Madison's boarding-house keeper, and the mother of a young son. Mrs. Todd's family were Quakers from Virginia, who had moved to Philadelphia in order to be near members of their own religious sect. Her lawyer husband and one of her children had died in a yellow fever epidemic in Philadelphia, a frequent scourge of that day. This, her second matrimonial venture, was a love match, and marriage soon followed her meeting with Madison. The ceremony took place at "Harewood," in Jefferson County, Virginia (now West Virginia), at the home of Samuel Washington, a brother of George Washington, whose son George had married a sister of the future Mrs. Madison. The marriage proved to be a happy one for both of them, and no President's wife ever excelled Dolly Madison in charm, helpful service, and genuine popularity.

The last years of his life were devoted to study, reflection, and the entertainment of the great and near-great who made a beaten pathway to his door. Books of all kinds were sent him for endorsement. When Lafayette visited America in 1824-1825, he was interested in visiting Madison and in talking to his mother, then near one hundred years of age. Despite her years, she enjoyed seeing and talking to those who came to pay honor to her great son, and preceded him to the grave by only seven years. His father had died twenty-eight years before, just as Madison became Secretary of State, in 1801.

Madison was known all his life for his keen sense of humor. On one occasion during his last years, Madison excused his own feebleness and need for rest as he lay on his couch talking to his guests,

by saying that he "had found in his old age that he talked best when he was lying." He suffered much from rheumatism during the last years of his life and spent most of his last days in a comfortable chair with a pillow at his back. It was while sitting in such a chair, dressed in his black dressing-gown, that death brought him relief from his suffering on June 28, 1836. He had been the first of all the delegates to reach Philadelphia for the Constitutional Convention in 1787, and the last one to leave there, and it was fitting that he should have been the last one of all the signers of the Constitution to linger in the land of the living.

Madison was much concerned over slavery before he died and spoke with deep feeling of its horrors, but expressed his disapproval of Calhoun's nullification plans, which were much discussed a few years before his death. Calhoun had tried to find excuse for his position in the Virginia resolutions favored by Madison more than thirty years before, but got scant support from their author in his maturest years.

In personal appearance Madison was not impressive, except for his great dignity and genial, intelligent face. He weighed only about one hundred pounds and his voice, though agreeable, was not strong. In early life he dressed in clothes of a somber hue and looked more like a rector in his church than a man of the world. He lived on a farm all his life, and it was in a rural graveyard near his Virginia home that he was laid to rest. When this author first visited his grave some burrowing animal had dug its summer home beneath the tomb, and as Gray expressed it in his elegy, "the paths of glory" had led, in the case of Madison, to a neglected grave.<sup>18</sup>

The famed Dolly Madison, who survived her husband by thirteen years, after living for more than a dozen years in Washington near the White House, where she had reigned so acceptably during the administrations of her husband and his great friend, Thomas Jefferson, was laid to rest near her devoted husband. She died during the administration of Zachary Taylor, a cousin of her husband and also a native of Orange County, Virginia.

After his death, and in accordance with his will, Mrs. Madi-

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<sup>18</sup> Montpelier, the Madison homestead, in 1936 was the property of a member of the Dupont family of Delaware.

son planned to publish his notes of the Philadelphia Convention, but finally sold them for \$30,000 to the Government, which published them in 1840. The widow had to struggle to keep the wolf from the door before her death, felt the pinch of actual want, and lived her last years in faded garments recalling the glory of greater days. There were no children, and the son of her first marriage brought her much unhappiness, not only by wasting her substance in riotous living, but by his utter neglect of her in her old age.

When James Madison died, the country knew but little of the making of its Constitution. As it becomes better known, Madison will more and more be honored, not only as one of its principal makers, but as the one who, at much personal industry, kept the story of its making. The following written message to his countrymen was found among his papers after his death:

"As this evidence, if it ever sees the light, will not do so till I am no more, it may be considered as issuing from the tomb where truth alone can be respected, and the happiness of man alone consulted. It will be entitled, therefore, to whatever weight can be derived from good intentions, and from the experience of one who has served his country in various stations through a period of forty years; who espoused in his youth, and adhered through his life to the cause of its liberty; and who has borne a part in most of the great transactions which will constitute epochs of its destiny.

"The advice nearest to my heart and deepest in my convictions, is *that the union of the states be cherished and perpetuated. Let the open enemy to it be regarded as a Pandora with her box opened, and the disguised one as the serpent creeping with his deadly wiles into Paradise.*"<sup>19</sup>

#### VIRGINIA RESOLUTIONS OF 1798

PRONOUNCING THE ALIEN AND SEDITION LAWS TO BE UNCONSTITUTIONAL AND DEFINING THE RIGHTS OF THE STATES.

Drawn by Mr. Madison.

"In the Virginia House of Delegates,

"Friday, December 21, 1798.

"*Resolved*, That the General Assembly of Virginia doth unequiv-

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<sup>19</sup> Madison, Wisconsin, the only state capital named for James Madison, was founded one year after his death. Its original streets were named after the signers of the Constitution.

ocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this state, against every aggression, either foreign or domestic; and that they will support the government of the United States in all measures warranted by the former.

"That this Assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

"That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them.

"That the General Assembly doth also express its deep regret, that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced construction of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the states, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be, to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

"That the General Assembly doth particularly PROTEST against the palpable and alarming infractions of the Constitution, in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated

to the Federal Government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto,—a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

“That this state, having, by its convention which ratified the Federal Constitution, expressly declared that, among other essential rights, ‘the liberty of conscience and the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States,’ and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution,—it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

“That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other states; the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship and the instrument of mutual happiness,—the General Assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for coöperating with this state, in maintaining unimpaired the authorities, rights, and liberties, reserved to the states respectively, or to the people.

“That the governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof, and that a copy be furnished to each of the senators and

representatives representing this state in the Congress of the United States."

"1798, December 24, Agreed to by the Senate."

### JOHN BLAIR

Though Virginia sent seven delegates to Philadelphia, all men of great distinction, only three of that seven affixed their names to the Constitution when the time came to sign on the dotted line. Two of the original seven, McClurg and Wythe, both of whom had gone as substitute delegates, were called home early in the session of the Convention and did not return. Two other Virginians, Mason and Randolph, were present at the end but refused to sign the document they had helped to make. It remained for Washington and Madison, one the President of the Convention, the other the unofficial reporter of its proceedings, and the learned John Blair, to sign for Virginia, the state which furnished the first great leaders in the plans which reached a climax in the Constitutional Convention.

John Blair was an interesting personality. He was five feet, ten inches tall—slight of frame and of commanding appearance. He was well known for his sandy hair which fell down over his ears, his puckered bird-like lip and his gentle cultivated manners. He had a grave judicial mien, and as he went about Williamsburg, he was honored as the good judge, the stainless citizen, the widely read and cultured scholar, and worthy descendant of a great family who had meant much in the life of that colonial seat of education and government. There his body now rests. The old Blair home was one of the historic landmarks restored by the Rockefeller restoration movement.

He was a native of Williamsburg, Virginia, where he was born in 1732. The Blair family was inseparably connected with the College of William and Mary located in Williamsburg, whose first President was James Blair, an uncle of John Blair. The college was founded in 1693 and grew out of an original school established by the Royal Government for Indians.

James Blair went to England in 1691 to secure the charter for the college, which was signed on February 19, 1693. When he



called upon Seymour, the Royal Attorney General, and delivered the King's instructions that the charter for the college be drawn, Seymour opposed it. Blair argued that Virginia had souls to be saved as well as England and that the college was needed. In reply Seymour said, "Damn your souls! Raise tobacco." The college was located for one year at Yorktown, where American Independence was won nearly one hundred years later.

William and Mary, of the English throne, gave the original endowment of 2,000 pounds and 20,000 acres of land. One of the peculiar conditions attached to the gift was that original Latin verses be sent each year to the Governor or Lieutenant-Governor of Virginia. No doubt one of the hidden causes of the American revolution.

James Blair served for fifty years as the President of the College of William and Mary. The Episcopal bishop of London served as its Chancellor from its beginning until 1776, when Virginia became an independent commonwealth. The college has had only two Chancellors since that time, one of whom was George Washington, who served from 1789 until his death ten years later; and the other was Ex-President John Tyler, an alumnus, who was Chancellor sixty years later, serving from 1858 until his death in 1862.

It was at William and Mary, the alma mater of three Presidents, Jefferson, Monroe and Tyler, and one Chief Justice of the Supreme Court, John Marshall, that the first law school in America was opened by George Wythe on June 1st, 1779. It was there also America's greatest honorary fraternity, the Phi Beta Kappa, was organized on December 12, 1776. Among its charter members were John Marshall and Bushrod Washington.

The great Benjamin Franklin received the first honorary degree of the college on April 2, 1756, when he was given the degree of Master of Arts. Franklin had offered his Albany plan for a more national government in America two years before, and was at the height of his powers.

So much for the early beginnings of the college which trained four of the Virginia delegates at Philadelphia and one Maryland delegate, John F. Mercer. As it happened, Blair was the only one

of these five William and Mary graduates whose name is now affixed to the Constitution.

John Blair, after graduating from William and Mary, was sent to London by his father, a famous man of his day, that he might complete his legal education at the Temple there as did so many sons of the leading families of that day.

Upon his return to America, he resumed his life at Williamsburg, which remained his home until his death there on August 31, 1800.

He was in the thick of the early fights in Virginia to correct the wrongs of England, but his inclination was to adopt a more conservative course than that of some of his younger and more volatile compatriots. He was frank to declare Patrick Henry's famous Stamp Act address of 1765, delivered in the old State Capitol at Williamsburg not far from his own residence, to be untimely and unfortunate. Henry was the orator and agitator, Blair was the deliberative lawyer of judicial mind who favored a more legal and orderly adjustment of the differences between the colonies and the King. But Blair did take part in the Conference held at Raleigh Tavern in Williamsburg in 1769, attended by Washington and others, whose members endorsed the non-importation agreement, similar to that issued by many other colonies, in which it was agreed to no longer import goods from England. He also represented the College of William and Mary in the Virginia House of Burgesses, where he had the same rights as the representative of a sovereign county. As President of the King's Council, he was the Executive head of Virginia when the Royal Governor died.

Blair was also a member of the convention which wrote the first constitution of Virginia in 1776. One year later he was made a member of the Court of Appeals in Virginia, where he served for three years until he was made a Chancellor of the state. He was holding that position at the time he was chosen to go to Philadelphia.

Though he remained at Philadelphia during the entire session of the Constitutional Convention, he was not an active or talkative member of the convention. His name seldom appears, if at all, in Madison's account of its debates. He sat, pondered, and voted with the ruling forces who fought successfully for an entirely new form of government, rather than a mere correction of the defects of the

old government and then, unlike Mason and Randolph who talked a lot, signed the Constitution at the end.

York County, Virginia, sent Judge Blair as its delegate to the Virginia ratification convention when that issue arose in Virginia a few months later. He stood with the forces in favor of ratification and was a dependable ally of Randolph and Madison in their fight for ratification. George Washington held aloof from that convention, and only Madison and Blair were there to represent the Virginia signers of the Constitution.

When Washington became President, he appointed his fine old Virginia friend as a member of the first Supreme Court of the United States on September 30, 1789, where he served until his resignation seven years later. He was on the bench during the infancy of the Supreme Court when few great questions for judicial interpretation came before it.

Justice Blair was succeeded on the bench by Samuel Chase, Chief Justice of the General Court of Maryland, a signer of the Declaration of Independence and one of the small group of Maryland and Virginia delegates who made up the history-making conference at Alexandria, Virginia, in March, 1785, which led to the subsequent conventions at Annapolis and Philadelphia. James McHenry had urged George Washington to appoint Chase Chief Justice when Jay resigned that position a few months prior to the resignation of Blair.

Samuel Chase did not have a happy career as a Supreme Court judge. He was a strong Federalist and did not hesitate on the bench and off of it to express his disapproval of Jefferson and his political policies. The result was his impeachment and subsequent trial before the Senate of the United States, where he was acquitted, though the majority of the Senate voted to convict him on three of the eight charges brought against him; he was found not guilty on the remaining five charges. Samuel Chase was the only member of the Supreme Court of the United States impeached in all its history. His trial was one of the twelve cases of impeachment ever tried before the Senate. Of the remaining eleven cases, seven of them involved the trial of United States District Judges, three of whom were convicted. The first was John Pickering, of New Hampshire,

who was chosen as a delegate from New Hampshire to the Constitutional Convention, but did not attend.

### *EDMUND RANDOLPH*

Fate plays a peculiar game in the lives of many great men. In none was this more true than in the career of Edmund Randolph who, as Governor of Virginia, led the delegation from that state to Philadelphia, took an active part in the making of the Constitution, failed to sign it, and finally, after serving in two different positions in the cabinet of George Washington, came to an unhappy political end.

The Randolph family represented the finest flower of Virginia culture and aristocracy. The first Randolph, William, settled on Turkey Creek below Richmond, Virginia, in the seventeenth century, and the old Randolph home there was only destroyed by Union gunboats during the Civil War.

Edmund Randolph was called the "Child of the Revolution," and for good reason. His own father, John Randolph, as his grandfather had been before, was Royal Attorney-General of Virginia, and refused to follow the state when it rebelled against the English king, whereas Peyton Randolph, John Randolph's brother, was chosen the first president of the first Continental Congress when it met on September 5, 1774. The mother of Jefferson came from the same original Randolph stock, as did also the eccentric John Randolph, of Roanoke, who was a thorn in the flesh to Jefferson and Marshall and other leaders of his time.

Edmund Randolph was born at Williamsburg, Virginia, the 10th day of August, 1753, at Tazewell Hall, which was still standing in 1936. As a student at William and Mary College in his home town of Williamsburg he ranked high. He not only was chosen as class orator when he was graduated, but his address was of such literary merit that the college published it for the benefit of those who were not fortunate enough to hear him. He was popular at college and an attractive leader, and his two beautiful sisters also added to the family popularity. He was what men call majestic, handsome in form, eloquent in speech, and charming and cultured in manner.

Like his famous cousin, William Henry Harrison, our only black-eyed President, he had inherited his sparkling black eyes from his Pocahontas kin.

The Revolutionary War, like the Civil War, divided many families, including that of Edmund Randolph. When it came on, his father, John Randolph, felt it his duty as the Royal Attorney General to remain loyal to the English king. When the fires of war began to rage he took his wife and two lovely daughters and sailed for Mother England, where he died a few years later; his body was brought back and buried in the chapel of the College of William and Mary, the family alma mater, a few years thereafter. It may be noted that before he left he gave his fiddle to his near relation, Thomas Jefferson.

Despite the Tory decision of his father, young Edmund, at the price of being disinherited, chose to remain loyal to Virginia and, like Lee and other Virginians of a later date, stood loyally with his home people. He was a favorite of his renowned uncle, Peyton Randolph, who compensated him by making him his heir.

Randolph had had a brief experience as an aide-de-camp on the staff of General George Washington during the first few months of Washington's service, which was the beginning of the long friendship between these two men which came to so unhappy an end. Benjamin Harrison, of Virginia, a signer of the Declaration of Independence and father of William Henry Harrison, a future President, in conversation about Randolph with George Washington at about this time, pronounced him one of the choicest young men in the colonies.

But his military career was cut short by the death of his Uncle Peyton. The nephew came to Philadelphia where his uncle died in October, 1775, and brought to Williamsburg the body of the man who had been speaker of the Virginia House of Burgesses and the first president of the Continental Congress. It may be added here that the ancestral home of Peyton Randolph also was still standing in Williamsburg in 1936, and was occupied by a lineal descendant of a brother of the mother of Washington. The restoration of Williamsburg by Rockefeller included the rebuilding of many of the homes of the notables of Randolph's day.

When only twenty-three years of age Edmund Randolph was a delegate to the State Constitutional Convention which met in Williamsburg on May 16, 1776, and took an active part in the making of the first written constitution in the world's history. He had among his associates many of the great men of Virginia, including Pendleton, Madison, Mason, Henry, and others whose names are household words to students of American history. It was there Pendleton wrote, Nelson introduced, and Patrick Henry successfully championed the first resolution to pave the way for the history-making document Jefferson wrote at Philadelphia a few weeks later. Randolph, the aristocrat, was later to match wits many times both at the bar and in politics with the fiery Patrick Henry, the spokesman of the common man.

When the new government of Virginia was established, Edmund Randolph was chosen to serve as the first Attorney General of Virginia. In that position he sustained the family tradition as a lawyer of skill and political acumen. He had been so successful as a lawyer in private practice that it is said his clients met him on the streets, money in hand, begging him to serve them.

Another service rendered by young Randolph in the early days of his political career was as Mayor of the town of Williamsburg, and it was perhaps natural for Edmund Randolph to win the governorship of Virginia as the successor of Patrick Henry, which position he won over the renowned Richard Henry Lee.

A visitor at the capitol of Virginia today will see a painting of him near the entrance to the office of the Governor. In Washington, next to the office of the Attorney General, is another portrait of him, showing a strong-jawed rugged individualist, hair unpowdered, and simple stock collar without frills.

It was during his administration as Governor of Virginia that a definite movement was made by Madison and others toward amending and enlarging the old Articles of Confederation. When plans had been definitely formed for the convention which met at Philadelphia, it was the persistent urging of Governor Edmund Randolph which led George Washington, who had at first refused to accept the responsibility, to leave Mount Vernon and go to Philadelphia as a delegate. He also rendered great service to Virginia as a member

of the Virginia Legislature and as a delegate to the Continental Congress, where he was a commanding figure. He was one of the three Virginians at the Annapolis Conference, and was chosen to attend the Alexandria Conference, but like James Madison failed to appear there.

When the seven Virginia delegates went to Philadelphia, Randolph, as Governor, not only led the delegation, but took an active part in the daily conferences between the Virginia and Pennsylvania delegations prior to the convening of the Convention on May 25, 1787.

Three days after the Convention opened Edmund Randolph rose and read to the Convention the document known in history as the "Virginia Plan" for the Constitution, which was the framework around which the Constitution was finally drafted. The address was one worthy of the man and the occasion, and by his ability and eloquence the way was opened for the making of an entirely new constitution rather than the mere amending and changing of the inadequate Articles of Confederation, as had been the original purpose of the Convention.

His part in the actual work of making the Constitution was a vital one. He served as a member of the Committee on detail, to which were submitted the several plans offered for a constitution, and was the author of a number of important features embodied in the Constitution as finally approved. We owe to Randolph the fact that the word "slavery" does not appear in the Constitution. He supported Franklin in his unsuccessful effort to have a chaplain appointed when the Convention was deadlocked early in the session. He also argued for three Presidents, or a Committee of Executives from three sections of the country, a conception which it is hard to visualize in practice today.

It was unfortunate for the fame of Edmund Randolph that he failed to affix his name to the document he had aided in drafting. But he insisted that a second constitutional convention should be provided for by the first convention, at which time such amendments as the states might offer in their several ratifying conventions could be duly considered. When that provision was not made, he refused to sign the very document he had had a vital part in making. His

letter explaining his reasons is printed in full at the end of this sketch.

Though Patrick Henry, who led the fight to defeat the ratification of the Constitution by Virginia, taunted Randolph with inconsistency when he threw the great weight of his influence in favor of ratification after having failed to sign the Constitution, it can be truly said that Virginia would not have ratified if he had not led in the fight therefor. In his great addresses on the floor of the convention he calmly stated that the time had come to decide between a constitution or no constitution, and that as a loyal Virginian he could not do otherwise than stand with those who were fighting for its ratification. To Henry's charges of inconsistency he declared that as to some of the acts of his life, on the Final Day he could only look to his Creator for mercy in passing judgment, but that he would only ask for justice when his course relative to the ratification of the Constitution came up for decision before the Last Tribunal.

Though Madison, Pendleton, Wythe, Nicholas, Innes and other great Virginians aided Randolph in his fight, there was likewise a notable array of Virginians who opposed ratification. Among that number was John Tyler, who later served as a governor of Virginia and whose son, who bore his name, later became President. Another great leader of the opposition was George Mason. Benjamin Harrison, a leader in the Continental Congress and also the father of a future President, as well as a governor of Virginia in his own name, followed Henry in his efforts to defeat ratification. James Monroe, who himself later became President, also joined the forces of Henry in opposing Randolph's efforts for ratification, and the vote in Virginia for ratification was carried with a majority of only ten votes.

It was natural, after this signal service, for George Washington to invite the brilliant and cultured Randolph to New York to assist in forming the new Federal Government, in which Randolph accepted the appointment of Attorney General of the United States, a position which he occupied from September 29, 1789, to January 1, 1794. The position, which did not become a cabinet post until Grant's administration, at first paid a salary of only \$1,500



per year. It was an important position, however, since many of the problems involved in the setting up of a new government came before the Attorney General for interpretation. Randolph served in this post during the year the Government was located in New York and then came down to Philadelphia when that city became the nation's capital.

The relationship between Washington and Randolph had been a most intimate one up to that period. Washington was not only an intimate friend of the Randolph family, but had shown a paternal interest in Edmund Randolph since the days of the Revolution, when Randolph had chosen to remain loyal to Virginia rather than go to England with his father. Randolph had served as Washington's own personal attorney, for which he refused to accept any sort of compensation, and had, as Grand Master, installed George Washington as Worshipful Master of the Masonic Lodge at Alexandria, Virginia. The hall in which Washington served as Worshipful Master is now a shrine, and nearby is the great Masonic Memorial in memory of Washington, the Mason.

The most notable case, from the historical and constitutional standpoint, in which Randolph appeared for the Government was the case known in legal history as *Chisholm vs. Georgia*, in which it was held that an individual had the right under the Constitution to sue one of the thirteen sovereign states in the Federal Courts. Chisholm, a South Carolinian, attempted to sue the state of Georgia for supplies furnished to Georgia troops during the Revolutionary War. When the case came up on appeal Jared Ingersoll and A. J. Dallas, the attorneys for Georgia, failed to appear. The Court's opinion, which was unfavorable to Georgia, was handed down by the learned James Wilson, who had served with Randolph in the Constitutional Convention. Much confusion arose in Georgia as a result of the decision, and the feeling there was so great that the state legislature passed an act fixing punishment upon any state official who dared to yield to the decision of the court. The outcome of the case was the Eleventh Amendment to the Federal Constitution, which provides that no sovereign state shall be sued without its own consent.

When Jefferson, the sage of Monticello, retired as Secretary of

State, Washington found much difficulty in choosing his successor. Among those who refused the task were Patrick Henry and James Madison, of Virginia, and Charles C. Pinckney, of South Carolina. Randolph only reluctantly consented to accept the post after it had been declined by many others, and then only at the earnest personal solicitation of Washington, for his own private affairs demanded that he return to his law practice in Virginia.

Soon after he took up the work of Jefferson, the great controversy over the ratification of the Jay Treaty began. Present-day students unfamiliar with that controversy cannot imagine the deep political divisions produced by the events of that day, which produced the political progenitors of our present-day political parties. Madison, who had been a strict Federalist, from and after this period swung, in present-day vernacular, "to the left," and became a Jeffersonian Democrat. Hamilton was the real author of the treaty, which was presented to the English Government by John Jay, sent as special ambassador to aid Thomas Pinckney, of South Carolina, our official ambassador.

The purpose of the treaty was to adjust issues which had grown out of the post-Revolutionary War period. Among these was the matter of the withdrawal of the English armies from several posts in the West, including those at Niagara Falls, Oswego, and Detroit, which had not taken place in accordance with the peace treaty of 1783, for the English were anxious to get the full benefits of the great fur industry of that otherwise undeveloped section and had used every pretext to remain all but in control of the region. Another issue concerned the matter of the payment to America by England for southern slaves which had been carried away by English troops during the Revolutionary War. The question of the impressment of American seamen into the British Navy was a further delicate problem, so delicate that around it grew the issues which led to the War of 1812 seventeen years later.

The issues were further clouded by wars raging in Europe, and all America soon became divided into two groups, English and French. Hamilton was openly pro-British, and so was Wolcott, the young Secretary of the Treasury who had succeeded Hamilton in that position. Edmund Randolph, as Secretary of State, attempted

to take a judicial attitude toward the issues involved as well as a neutral one from a governmental standpoint, and opposed the treaty unless the clause permitting the British to impress American sailors and the clause preventing America from shipping food to France should be removed, both of which clauses were much to the advantage of England. But his middle course only brought ridicule on his head.

The Jay Treaty was received in Philadelphia from England early in 1795. It was ratified by Congress in June, and it remained for Washington's approval to become operative. Out of that approval came the great crisis in the life of Edmund Randolph.

Washington had gone to Virginia to seek rest at his beloved Mount Vernon, where he received a message from Timothy Pickering, Secretary of War in his Cabinet, urging him to return at once to Philadelphia since grave matters had arisen for his consideration. When Washington arrived in Philadelphia on August 11th he was immediately approached by Wolcott and Pickering, both bitter pro-British partisans, who laid before him a letter written in French on October 31st of the previous year by Fauchet, the French ambassador at Philadelphia. Fauchet was the suave young successor to the daring and rebellious Genet, who had been recalled by France at Washington's request after his spectacular and undiplomatic effort to arouse French sympathy in America and to lead us to war against England. The letter had been sent to the French Government on a French vessel which had been captured, the mail thrown overboard and later rescued by an English vessel. The Fauchet letter was immediately forwarded to Hammond, the British ambassador at Philadelphia, who in turn with a great air of undisclosed mystery delivered it to Wolcott, of Washington's cabinet. The letter suggested to the French Government that as a result of his several interviews with Randolph, which he termed "precious confessions," Fauchet was convinced of Randolph's friendliness for the French people. In it also was a vague suggestion that if he had money on hand he could exert a far-reaching influence upon Randolph in behalf of the French cause.

Three days after Washington's return to Philadelphia, on August 14, 1795, he gave his official approval to the Jay Treaty.

One of Washington's unexplained acts at this time was the entertaining of Randolph and the acceptance of entertainment from Randolph several days after this mysterious message had been placed in his hands and before acquainting Randolph himself with its contents. It was five days after signing the treaty, on August 19th, before Washington, in the presence of Randolph's enemies in the Cabinet, placed Fauchet's mysterious letter before his Secretary of State. With a stern look of unexpressed condemnation Washington asked Randolph, who knew French, to read the communication and give such explanation as he desired of the insinuations contained therein. Randolph, with great calmness, read the communication and, turning to Washington, very quietly stated that he could explain any references which may have involved the President or his administration. Proud Virginian that he was, however, he burned with indignation not only at the veiled insinuations contained in the message, but at the suggestion of his own guilt implied by the cold manner of the great Washington, his trusted friend and political godfather. He asked that he be allowed to communicate with him and offer his own explanation at a later date, and, a few hours later, sent to Washington his resignation as Secretary of State. The resignation was accepted and his political life was at an end.<sup>20</sup>

Randolph immediately thereafter hastened to overtake Fauchet, the French ambassador, who having been recalled was about to sail back to France. The treaty had been ratified, France had lost, Randolph had resigned, and a new era had begun. When Fauchet was approached by him just before sailing, he not only denied any insinuation of guilt on the part of Randolph, but promised to furnish a written explanation of his meaning in a letter. The vessel sailed without the explanation, but later such a message came from

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<sup>20</sup> When Randolph read the Fauchet letter he said, "If I may be permitted to retain this letter a short time, I shall be able to explain in a satisfactory manner everything in it which has referred to me." The next day he resigned.

George Washington said later, "No man would rejoice more than I should I find the suspicions which have resulted from the intercepted letter were unequivocally and honorably removed."

Randolph said, "I have been the meditated victim of party spirit."

Fauchet completely exonerating Randolph, though too late to avoid the damage which had been done.

Soon thereafter Randolph issued a lengthy defense of his own innocence which to any fair and judicious-minded person completely exonerated him of any disloyalty. But it may be conceded that Randolph, the judicial-minded lawyer, had been out of place when partisanship was the price of popularity. His critics attributed his position on the English-French issue to the same vacillation of temperament which had led him to fail to sign, a few years before, the very Constitution which he had helped to make, and it is possible that he was lacking in a certain firmness of character necessary to cope with the acute political issues of that time.

The judgment of Washington has been defined by some as all but infallible, but he greatly erred when, moved by the politics of the moment, he sacrificed his friend and fellow Virginian on the altar of political expediency. He is reported to have said to Randolph, "I sacrifice you, but I never doubted you." Soon after his departure from the Cabinet, Edmund Randolph spoke of Washington as one having the hypocrisy of a Tiberius and the injustice of an assassin, but time healed the sore wounds which had been made, and before his death he wrote a warm appreciation of Washington in a letter to Bushrod Washington, his nephew, who was at that time a member of the United States Supreme Court.

Timothy Pickering, of Massachusetts, a bitter Hamiltonian Federalist, who was appointed by Washington to succeed Randolph, was later openly hostile to John Adams and became so obnoxious that Adams finally dismissed him from office.

His troubles, however, did not end with his resignation as Secretary of State. Before he retired from the office he directed that none of the state papers be touched before an examination of his office had been made. When the examination was made it was found that his accounts showed him in debt to the Government in the sum of \$53,162.89. There was no intimation of defalcation on the part of Randolph, personally. But the Secretary of State, who was personally in charge of all funds for use by the representatives of the Government at various foreign courts, was

also held personally responsible for them, and the failure of a bank in Holland where American funds were held had put a heavy burden upon Randolph. He at that time had but little money. He had had to borrow several thousand dollars from Virginia relatives to meet personal losses and expenses incurred while serving the nation, and when this claim was presented to him by the Government, he was compelled to turn to wealthy members of his wife's family for assistance.

After two unsuccessful efforts to adjust the claim in the United States Court at Richmond, Randolph suggested that Gabriel Duval, the Auditor of the Treasury, serve as a Committee of One to pass on the justice of the claim. This was done. Duval ruled against Randolph, and an impossible sum was demanded of him. Fifteen years after he left the office of the Secretary of State, what was supposed to be a complete settlement was made through the sacrifice of Randolph and members of his family on January 1, 1810, at which time an amount was paid which some writers contend was several thousand dollars in excess of the amount actually due the Government. Richard Rush, a son of Dr. Benjamin Rush, the physician and patriot who signed the Declaration of Independence, as Secretary of the Treasury in the cabinet of John Quincy Adams, further signed a final discharge of the debt on March 25, 1825. Despite that fact, the records of the Treasury of the United States show today a debt due the Government by Randolph. In response to a communication from the author of this volume, the Department of Accounts sent a statement dated June 7, 1935, showing that according to Treasury Report No. 66231 of date of October 26, 1834, the last report of the Randolph indebtedness, the Government claimed at that date the sum of \$61,355.07 to be due it.

The last years of Randolph were years of poverty and sorrow. He returned to Richmond where he had served as Governor and again became the popular Virginia lawyer; when Aaron Burr was brought to trial there in 1807, he was among the great array of legal lights who defended him. In addition to his work at the Bar he also became the law teacher of many aspiring young Virginians. Among his pupils was young John Tyler, destined to become President of the United States, after beginning at twenty-one years

of age a political career which carried him into many positions of honor and trust in Virginia and the nation.

The Randolph home in Richmond was located where the City Hall of Richmond now stands. He also lived for a while on a farm known as the "Spring Farm," not far from Richmond. He found his only happiness at this period of his life in his devoted wife, a daughter of Robert Carter Nicholas, ex-Treasurer of Virginia, whom he adored, in his four splendid children, and in writing a history of Virginia, upon which he was working at the time of his death.

Randolph's one son, Peyton, the namesake of his father's uncle, married the famous Marie Ward, who was said to have been the only sweetheart of the eccentric John Randolph, of Roanoke, who died a bachelor in a Philadelphia hotel after an unhappy political career uttering as he died the words, "Remorse, remorse."<sup>21</sup> Like his father, Peyton Randolph was a graduate of the College of William and Mary, and served as Governor of Virginia from December 26, 1811, to January 3rd, 1812. He was for years the reporter of the Supreme Court of Virginia.

The three daughters of Edmund Randolph were Susan Beverly, who became the wife of Bennett Taylor, a Virginia lawyer; Edmonia Madison, who became the wife of Major Thomas Lewis Preston; and Lucy Nelson, who became the wife of Peter Vivian Daniel, a law student of her famous father, who died many years later as a member of the Supreme Court of the United States. Many descendants of Randolph still live; among that number is Edmund Randolph Preston, a great-great-grandson who, in 1936, was serving as a special assistant to the Attorney General of the United States, a position first occupied by his renowned but unfortunate ancestor.

The death of Randolph's loyal wife in 1812 hastened his own end. Though she had not possessed, for a woman, his attractiveness as a man, he adored her, and after her passing wrote a tribute to her memory for his children and those who were to come after them. During his last days he suffered much from palsy, a disease which had taken away his uncle, Peyton, as it was to take his own son,

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<sup>21</sup> John Randolph, of Roanoke, began his political career with a public speech in Charlotte County, Virginia, on the very day Patrick Henry delivered his last public address during the summer of 1799.

Peyton. He was visiting the family of Nathaniel Burwell, relatives of his wife, at their country estate located near Millwood in Clarke County, Virginia, known then and now as Carter Hall, when the end came to his brilliant and unhappy career on September 13, 1813.

He was buried nearby in what is known as the Chapel Cemetery, close beside his daughter, Susan Beverly Randolph. A simple monument marked his grave until a few years ago, when a more pretentious one was erected by the masonic order of Virginia. Upon his tomb the visitor will find the Latin phrase, "*Fari Quae Sentiat*," which may be translated: "Let each man speak the words he feels in his heart."

#### EDMUND RANDOLPH'S LETTER

TO THE VIRGINIA LEGISLATURE, EXPLAINING WHY HE DID NOT SIGN  
THE CONSTITUTION

When the plan which is now before the General Assembly was on its passage through the Convention, I moved that the state conventions should be at liberty to amend, and that a General Convention should be holden, to discuss amendments which should be suggested by them. This motion was in some measure justified by the manner in which the Confederation was forwarded originally, by Congress, to the state legislatures in many of which amendments were proposed; and those amendments were afterwards examined in Congress. Such a motion was, then, doubly expedient here, as the delegation of so much more power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following:

1. It is said, in the resolutions which accompany the Constitution, that it is to be submitted to a convention of delegates chosen in each state by the people thereof, for their assent and ratification. The meaning of these terms is universally allowed to be, that the convention must either adopt the Constitution in the whole, or reject it in the whole, and is positively forbidden to amend. If, therefore, I had signed, I should have felt myself bound to be silent as to amendments, and to endeavor to support the Constitution without the correction of a letter. With this consequence before my eyes, and with a determination to attempt an amendment, I was taught by a regard for consistency not to sign.

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full oppor-



tunity to propose, through his representatives, any amendment which in his apprehension, tends to the public welfare. By signing, I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the people on its side. But if, at a future day, it should become burdensome after having been adopted in the whole, and they should insinuate that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether,—under my impressions, and with my opinions, I should not be able to justify myself, had I signed it.

4. I was always satisfied, as I have now experienced, that this great subject would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself how a constitution will work for a course of years, until at least he shall have the observations of the people at large. I also fear more from inaccuracies in a constitution, than from gross errors in any other composition: because our dearest interests are to be regulated by it, and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information which I ardently desired.

5. I was afraid that, if the Constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the Union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked whether all these arguments were not well weighed in Convention? They were, sir, with great candor. Nay, when I called to mind the respectability of those with whom I was associated, I almost lost confidence in these principles. On other occasions, I should cheerfully have yielded to a majority; on this the fate of thousands yet unborn enjoined me not to yield until I was convinced.

6. Again, may I be asked why the mode pointed out in the Constitution, for its amendment, may not be sufficient security against its imperfections, without now arresting its progress? My answers are—1. That it is better to amend, while we have the Constitution in our power, while the passions of designing men are not yet enlisted, and while a bare majority of the states may amend, than to wait for the uncertain assent of three-fourths of the states. 2. That a bad

feature in government becomes more and more fixed every day. 3. That frequent changes of a constitution, even if practicable, ought not to be wished, but avoided as much as possible. 4. And that in the present case, it may be questionable whether, after the particular advantages of its operation shall be discerned, three-fourths of the states can be induced to amend.

I confess that it is no easy task to devise a scheme which shall be suitable to the views of all. Many expedients have occurred to me, but none of them appear less exceptionable than this: that if our convention should choose to amend, another federal convention be recommended; that, in that federal convention, the amendments proposed by this or any other state be discussed; and if incorporated in the Constitution, or rejected,—or if a proper number of the other states should be unwilling to accede to a second convention,—the Constitution be again laid before the same state conventions, which shall again assemble on the summons of the executives, and it shall be either wholly adopted, or wholly rejected, without a further power of amendment. I count such a delay as nothing, in comparison with so grand an object; especially, too, as the privilege of amending must terminate after the use of it once.

I should now conclude this letter, which is already too long, were it not incumbent on me, from having contended for amendments, to set forth the particulars which I conceive to require correction. I undertake this with reluctance, because it is remote from my intentions to catch the prejudices or prepossessions of any man. But as I mean only to manifest that I have not been actuated by caprice, and now to explain every objection at full length would be an immense labor, I shall content myself with enumerating certain heads in which the Constitution is most repugnant to my wishes:

The two first points are the equality of suffrage in the Senate, and the submission of commerce to a mere majority in the legislature, with no other check than the revision of the President. I conjecture that neither of these things can be corrected, and particularly the former, without which we must have risen perhaps in disorder.

But I am sanguine in hoping that, in every other justly obnoxious cause, Virginia will be seconded by a majority of the states. I hope that she will be seconded. 1. In causing all ambiguities of expression to be precisely explained; 2. In rendering the President ineligible after a given number of years; 3. In taking from him the power of nominating to the judiciary offices, or of filling up vacancies which

may there happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; 4. In taking from him the power of pardoning for treason, at least before conviction; 5, In drawing a line between the powers of Congress and individual states; and in defining the former, so as to leave no clashing of jurisdictions nor dangerous deputies; and to prevent one from being swallowed up by the other, under cover of general words and implication; 6. In abridging the power of the Senate to make treaties supreme laws of the land; 7. In incapacitating the Congress to determine their own salaries; and 8. In limiting and defining the judicial power.

The proper remedy must be consigned to the wisdom of the convention; and the final step which Virginia shall pursue, if her overtures shall be discarded, must also rest with them.

You will excuse me, sir, for having been thus tedious. My feelings and duty demanded this exposition; for through no other channel could I rescue my omission to sign from misrepresentation, and in no more effectual way could I exhibit to the General Assembly an unreserved history of my conduct.

I have the honor, sir, to be, with great respect, your obedient servant,

EDMUND RANDOLPH.

*GEORGE MASON*

As the eighteenth century recedes further and further into the distant past it becomes increasingly difficult for succeeding generations fully to appreciate the importance and the significance of George Mason. Indeed, in the light of the increasing growth of an industrial America and a steadily more evident concentration of thought and action along national rather than state lines since the days of the Civil War, it may safely be said that there is no one today, born and raised since that great upheaval, who can fully recreate or embody for us Mason's habits of thought or the full logic of his position. Yet, of all the men treated in this book, he was the best example of one of the finest and most vital groups in our early social mechanism.

By the time of the Philadelphia Constitutional Convention of 1787 the impressive Mason, in his meticulously ruffled shirt, silk

stockings, and flowing locks, was one of the oldsters among the nation's leaders. He was another of the great and aristocratic planter-statesmen from Virginia, born to leadership and high position, to whom personal freedom had meant all that was best in a narrow but highly refined society. Freedom of thought and action, personal integrity, and local independence were to combine to be the key to the evolution of his thought: they were in the end to overshadow his further realization as a man of wealth and large means that certain petty localisms must go if Virginia and the other twelve states were to survive and be prosperous. He did not in the end endorse the Constitution, but his detailed explanation for his conduct, after his earnest endeavors in assisting to frame it, can leave no doubt of his intelligent sincerity, and discloses as keen an appreciation of the inescapable difficulties before the Convention as came from any of the men there.

George Mason was born in 1725 in Fairfax County, Virginia, seven years before his lifelong friend, George Washington, was born further down the Potomac in Westmoreland County. His ancestors were English aristocrats who had defied Charles II in England and had come to America in 1651. He inherited the family estate, on whose 6,000 acres he built Gunston Hall in 1758, which is still standing; he also owned broad lands across the mountains in what is now Kentucky, where a county is today named after him. Until he was past fifty he confined his activities to those of a well-to-do planter, and ships from the high seas put in at his private wharves to carry the tobacco raised by his hundreds of slaves to all parts of the world. In his hours of leisure he read assiduously in his library, magnificent for its day, which he was able to accumulate, and though he never practiced except to become a county judge for a time, he was as well-founded a lawyer as his brother who was a prominent member of the Virginia Bar. He was also an expert shot and a great sportsman.

Nevertheless, though his interest in public affairs was also keen, he had a distinct aversion to direct participation in public affairs. He served one term in the old Virginia House of Burgesses, but otherwise his direct services to the community were confined to being a county judge and vestryman with George Washington

in the Pohick Episcopal Church which both attended, and which was standing in 1936. He consistently refused ordinary public office, even after independence had been won, and in his will, which may still be read in the probate court records at Fairfax, Virginia, he urged his views on his sons, though with so fine an appreciation of the high requirements for public service that they go far to explain the quality of his own rare public participation at critical moments in the affairs of his country. In his will he said to his sons:

“I recommend to you from my own experience in life to prefer the happiness of independence and a private station to the struggles and vexations of public business; but if either your own inclinations or the necessities of time should engage you in public affairs I charge you in a father’s blessing never to let the motives of private interest nor ambition induce you to betray, nor terrors of poverty nor disgrace nor fear of danger nor of death deter you from asserting the liberty of your country and endeavoring to transmit to your country’s posterity those sound rights to which you were born.”

In spite of these views in regard to public office generally, when the differences with England became pressing Mason did not hesitate to take his part in the extraordinary conflict. In 1769 he wrote the Virginia non-importation agreement presented at Williamsburg by Washington, and also published a forcefully reasoned tract against the Stamp Act. In July, 1774, he was the author of resolutions taken at a meeting in Fairfax County urging the necessity of a Continental Congress for united action, two months before the first such Congress met in Philadelphia. Late in the summer of 1774 he was at Mount Vernon to see George Washington, Patrick Henry, and George Pendleton set forth for Philadelphia to attend the first sittings of the Congress. In 1775, at the age of fifty, he served on the Virginia Committee of Safety. In 1776 he and Thomas Jefferson were among the first to encourage George Rogers Clark in his petition to Governor Patrick Henry for arms and money with which to prosecute the conquest of Kentucky and ultimately the entire Northwest Territory in the name of Virginia; in the same year he took part as one of the principal minds in drafting the Vir-

ginia state constitution, the first document of its kind in the history of the world. He was also the sole author of Virginia's famous Bill of Rights, the individual citizen's sure bulwark against the encroachments of an over-weening government. This Bill of Rights is Mason's greatest legacy to posterity, and it is commemorated today in the great Crawford Monument erected in 1858 on the capitol grounds at Richmond. It became one of Jefferson's principal sources in writing the Declaration of Independence, and was heavily drawn on in 1789 in drafting our present Federal Bill of Rights contained in the first ten amendments to the Federal Constitution.<sup>22</sup>

However, in the direct operation of government Mason still refrained from taking a part. He refused to take a seat in the Continental Congress, although Madison, who knew him well, ranked him among the country's greatest debaters, and Jefferson eulogized him as a man of wisdom, expansive mind, profound judgment, and cogent argument. He did not again appear in public activities of the day until 1785, when he became a Virginia delegate to the Alexandria Conference to discuss plans for regulating commerce on the Potomac River with delegates from Maryland. In these discussions he took a leading and brilliant part, but failed to attend the larger conference at Annapolis the following year.

In the Philadelphia Convention Mason was one of the four or five members who most often took the floor to speak, and his powerful logic and dignified presentation won him the respect of all present. Nevertheless it soon became apparent, as one great issue after another was threshed out, that his views were hopelessly at variance with those of the dominant forces in the Convention. Compromises in the name of expediency were not acceptable to him; on the power of the Federal Government to regulate interstate and foreign commerce he was utterly opposed to permitting its exercise by a simple majority of the members of Congress; slave-owner though he was, he objected strongly to the tacit recognition of slavery by the Constitution, denounced slave-owners as "petty tyrants," demanded the immediate prohibition of the infamous slave trade,

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<sup>22</sup> The original copy was presented to the State of Virginia in 1844 by General John Mason, a son of George Mason.

and favored the ultimate entire prohibition of the institution of slavery; in the powers granted the President he saw the foundations of tyranny; in the right given the President to succeed himself he feared the opportunity for monarchy; in the implied power given the Supreme Court to declare state laws unconstitutional, and in the power of the President and Senate to make treaties with foreign nations to the exclusion of the states, he saw the abrogation of the states as independent political entities; in the failure of the Constitution to impose some limit on the amount of Federal taxation he foresaw a tax tyranny more oppressive than that which the colonies had fought to escape only a few years before; in the proposal to have the Constitution ratified by state conventions he saw the opportunity for foisting a new government on the people without their real consent. On the other hand, in regard to proposals for popular or semi-popular election of the President he expressed absolutely no faith in the capacity of the populace to choose intelligently, and openly declared on the floor of the Convention that a blind man was as capable of choosing colors as was the average citizen of choosing the proper person for President of the United States.

As the last days of the Convention approached it became increasingly evident that Mason and some others would be induced to subscribe to the Constitution only with difficulty, if at all. A number of those who were not in accord with the action of the Convention had already left Philadelphia, but Gouverneur Morris and the others who favored what had been done were anxious that the document bear at least the implied approval of as many as possible of the forty-two who still remained. In an effort at conciliation he and Benjamin Franklin prepared a form of approval at the end of the Constitution which in effect stated merely that the document as sent to Congress had been done in Convention, thus making it unnecessary for those who wished to sign, thereby necessarily, to express their unqualified approval. Mason at once objected to the ambiguous phraseology, as did also the forthright Charles Cotesworth Pinckney, but the language was adhered to. Doubtless a number signed because of it who otherwise would not have done so, but Mason could not be won over, and in the end Mason, his close

friend Governor Randolph, of Virginia, and Elbridge Gerry, of Massachusetts, refused to sign.

On his return to Richmond after the Convention, Mason delivered the following forceful letter to the Virginia legislature setting forth his reasons for refusing to approve the new Federal Constitution:

"There is no declaration of rights; and, the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights in the separate states are no security. Nor are the people secured even in the employment of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.

"In the House of Representatives there is not the substance, but the shadow only, of representation, which can never produce proper information in the legislature, or inspire confidence in the people. The laws will, therefore, be generally made by men little concerned in, and unacquainted with, their effects and consequences.

"The Senate have the power of altering all money bills, and of originating appropriations of money, and the salaries of the officers of their own appointments, in conjunction with the President of the United States, although they are not the representatives of the people or amenable to them. These, with their other great powers (*viz.*, their powers in the appointment of ambassadors, and all public officers, in making treaties, and in trying all impeachments); their influence upon, and connection with, the supreme executive from these causes; their duration of office; and their being a constant existing body, almost continually sitting, joined with their being one complete branch of the legislature—will destroy any balance in the government, and enable them to accomplish what usurpations they please upon the rights and liberties of the people.

"The judiciary of the United States is so constructed and extended as to absorb and destroy the judiciaries of the several states; thereby rendering laws as tedious, intricate, and expensive, and justice as unattainable, by a great part of the community, as in England; and enabling the rich to oppress and ruin the poor.

"The President of the United States has no constitutional council (a thing unknown in any safe and regular government). He will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a



tool to the Senate; or a council of state will grow out of the principal officers of the great departments—the worst and most dangerous of all ingredients for such a council, in a free country; for they may be induced to join in any dangerous or oppressive measures, to shelter themselves, and prevent any inquiry into their own misconduct in office. Whereas, had a constitutional council been formed (as was proposed) of six members, viz., two from the Eastern, two from the Middle, and two from the Southern states, to be appointed by the vote of the states in the House of Representatives, with the same duration and rotation of office as the Senate, the executive would always have had safe and proper information and advice; the president of such a council might have acted as Vice-President of the United States, *pro tempore*, upon any vacancy or disability of the chief magistrate; and long-continued sessions of the Senate would in a great measure have been prevented. From this fatal defect of a constitutional council has arisen the improper power of the Senate in the appointment of the public officers, and the alarming dependence and connection between that branch of the legislature and the supreme executive. Hence, also, sprang that unnecessary officer, the Vice-President, who, for want of other employment, is made president of the Senate; thereby dangerously blending the executive and legislative powers, besides always giving to some one of the states an unnecessary and unjust preeminence over the others.

“The President of the United States has the unrestrained power of granting pardon for treason; which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt. By declaring all treaties supreme laws of the land, the executive and the Senate have avoided, by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

“By requiring only a majority to make all commercial and navigation laws, the five Southern States (whose produce and circumstances are totally different from those of the eight Northern and Eastern States) will be ruined; for such rigid and premature regulations may be made, as will enable the merchants of the Northern and Eastern States not only to demand an exorbitant freight, but to monopolize the purchase of the commodities at their own price, for many years, to the great injury of the landed interest, and the impoverishment of the people; and the danger is the greater, as the gain

on one side will be in proportion to the loss on the other. Whereas, requiring two-thirds of the members present in both houses would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of the government.

"Under their own construction of the general clause at the end of the enumerated powers,<sup>23</sup> the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them, or the people for their rights. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

"The state legislatures are restrained from laying export duties on their own produce; the general legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importations render the United States weaker, more vulnerable, and less capable of defence. Both the general legislature and the state legislatures are expressly prohibited making ex post facto laws, though there never was, nor can be, a legislature but must and will make such laws, when necessity and the public safety require them, which will hereafter be a breach of all the constitutions in the Union, and afford precedents for other innovations.

"This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.

"GEORGE MASON."

In regard to at least some of these objections, it may be observed that the bill of rights for which Mason asked in his first paragraph was added to the Constitution by the first ten amendments thereto. As to his fear that the Senate would override the other branches of government, it has been the experience of history that first one branch and then another of the government has risen to dominance,

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<sup>23</sup> Mason is referring to the "necessary and proper" clause of the Constitution, Article I, at the end of Section 8. The Bill of Rights (Amendments I to X) has cured at least some of Mason's objections at this point.

depending on the relative capabilities and merits of the men in each at any given time.

In his fears for the need of a body to advise the President, Mason reflects the general lack of conception of his day for the full possibilities of representative government with executive officers responsible to the legislative branch: certainly his suggestion for a council to advise the President would not have worked. But it took another fifty years of English history for the idea of ministerial responsibility to Parliament to evolve, and then it only evolved by accident, first out of the long period in which the members of the House of Hanover could not speak English and therefore had to let their various ministers rise and fall according as they could or could not control Parliament, and later when, during the early years of the reign of Victoria, the inexperienced young girl-Queen had of necessity to rely on her ministers to take the responsibility for decisions of policy. Democracies in other countries than the United States which have come into existence since the difference has been clearly recognized have tended to follow the English rather than the American pattern, and have chosen to have a President with a comparatively long term and limited powers, with ministers supervising most government functions who hold office during the pleasure of a popular Parliament, and a Parliament which can be required at any time to "go to the country" for confirmation of its claimed popular mandate. In the historical evolution of parliamentary institutions the American plan is a transitional one, but Mason can hardly be blamed for not having discovered the possible alternative in his groping suggestions for a remedy.

In his fear for the failure to require more than a simple majority to pass acts regulating commerce Mason correctly foretold the gradual growth of protective tariffs which have resulted in making America today a predominantly industrial rather than an agricultural nation such as it was when the Constitution was written. As to the danger of a monarchy or a political aristocracy in the United States, this has been defeated, first, by George Washington's precedent against seeking the Presidential office more than twice in succession; second, by the rapid broadening of the electorate in all states to universal manhood suffrage early in the nineteenth century and

universal women's suffrage early in the twentieth; third, by the constantly democratizing influence of the expanding Western frontier until the end of the nineteenth century; fourth, by the destruction of the large landed estates of the South in the Civil War; fifth, by the relative instability of industrial and financial fortunes.

On the floor of the Virginia ratification convention Mason became a leader in opposing ratification, and he and Patrick Henry spoke often and bitterly against it. They lost, but Henry, the dominant force in the Virginia legislature, was still strong enough to prevent the election of Madison, who had advocated ratification, to the first United States Senate. Henry first offered the post to Mason, who however declined in accordance with his fixed principles against holding office, and Henry hand-picked two others instead. One of them, Grayson, died a short time later and Henry again offered the post to Mason, but Mason again declined and James Monroe was chosen.

Mason's work in helping draft the Federal Constitution was his last noteworthy public service; he thereafter again withdrew to his broad estates and devoted his few remaining years to his large family, to which he was devoted. He had married his first wife when she was only sixteen, and after her death he ever afterward carried a line in his pocket: "What can the honors of the world impart, to soothe the anguish of a bleeding heart?"<sup>24</sup> To each of his five sons he gave large estates and slaves to work them; the estates were each named after famous Revolutionary battles, one of them being called Lexington.

Mason died at Gunston Hall on October 7, 1792, and was buried nearby. The fine old home, owned for many years by Louis Hertle, a Chicago capitalist, has been donated to the state of Virginia and is today a shrine to the memory of Mason, one of the first and finest citizens of the state and nation.<sup>25</sup>

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<sup>24</sup> On the tomb of the wife of George Mason are these words:

*"Once she was all that cheers and sweetens life;  
The tender mother, daughter, friend and wife.  
Once she was all that makes mankind adore.  
Now view this marble and be vain no more."*

<sup>25</sup> There was a George Mason Hotel at nearby Alexandria in 1936.

The large and wealthy Mason family remained prominent for many years after George Mason's death. One of his nephews, Stephen Thomas Mason, succeeded James Monroe as United States Senator from Virginia in 1794, though he made himself unpopular there by giving to a Philadelphia newspaper the text of the Jay Treaty with England before it had been acted on in secret session by the Senate. His son, Stephen Thomas Mason, Jr., was appointed the first territorial governor of Michigan by President Jackson in 1836 before he was thirty years of age; his statue stands today in downtown Detroit, and his portrait hangs in the Michigan House of Representatives at Lansing. His brother, Armistead Mason, became United States Senator from Virginia before he was thirty, a distinction claimed only by Henry Clay and two others in the nation's history. Another of the Mason family, John Young Mason, was Secretary of the Navy in the administrations of both Presidents Tyler and Polk.

The first generation of George Mason's direct descendants heeded their father's recommendation against holding public office, but later generations did not. When the Civil War broke out and George Mason's strong states'-rights views were put to the ultimate test of the sword, his Virginia descendants also took the states'-rights view and remained loyal to their state in the course of secession. One of Mason's five sons had been General John Mason; a great-grandson was Fitzhugh Lee, a Virginia statesman of Civil War fame.

One of his grandsons was James Murray Mason, who was sent to Mexico City in an unsuccessful effort to purchase California before the outbreak of the war with Mexico. He represented Virginia in the United States Senate from 1847 to 1861, when he was expelled for espousing the cause of the South; he had been the author of the famous Fugitive Slave Law signed in 1850 by President Fillmore. On his return to Virginia he and John Slidell were sent to Europe to seek foreign recognition for the Confederate cause; they eluded the Union blockade and got to Havana, where they took the English mail steamer *Trent* sailing for London. In the Bahama Channel a Union vessel stopped the *Trent*, took off the two Confederate emissaries, and brought them to a Northern port. In the North their capture was hailed with premature delight;

England was outraged at the violation of its rights as a neutral, protested vigorously, and even sent additional troops to man the Canadian borders; only the slowness of communications prevented the immediate outbreak of hostilities.

England's position in this so-called "Trent Affair" was contrary to its position in stopping and searching American vessels during the Napoleonic Wars, but the American action was also inconsistent with the claimed rights of the United States as a neutral prior to 1812. Secretary of State Seward eventually consented to release the two Southerners, though on the specious ground that the *Trent* should first have been brought into a prize court and Mason and Slidell declared "contraband persons" before being detained. As a matter of strict international law they belonged to the diplomatic rather than the military forces of the South, and as such were entitled to immunity from capture while on a neutral vessel in any event. After being released they proceeded to England, but because of the strong anti-slavery sentiment in Europe and the gradual successes of the Union forces failed to gain foreign recognition for the South.

#### GEORGE WYTHER

It was unfortunate that George Wythe, one of the great characters among the seven Virginia delegates to the Philadelphia convention, was not able to remain there and have a vital part in the making of the Constitution. He was called back home to an invalid wife less than two weeks after the Convention opened, and did not return again to Philadelphia while the Convention was in session. As a result, he had but a small part in the making of the Constitution, although he played a considerable rôle later in effecting its adoption in the Virginia ratification convention.

George Wythe was one of the many renowned lawyers chosen to go to the Convention. He was serving as Chancellor of Virginia when he was sent to Philadelphia, a position which he held until his death.

He was a native of Elizabeth City County, Virginia, where he was born in 1725 in what was known as the "Backriver Community." His early years were years of waste, both in time and of money. He

inherited a comfortable fortune in lands and slaves, and as a youth enjoyed it in a frivolous fashion. He went to the College of William and Mary and there completed his higher education, but the first years of his adult life were in great contrast to his latter ones of great thought and fine action, climaxed by his receiving the degree of Doctor of Laws from his alma mater in 1795.

The life of Wythe began on a serious scale in 1758, when he was first elected to membership in the Virginia House of Burgesses at Williamsburg, the seat of his alma mater. After serving for ten years as a member of that body, he became its clerk in 1768, which position he filled for the succeeding seven years. In 1777, after experience as a member of the Continental Congress, where he was one of the signers of the Declaration of Independence, he was back in Williamsburg as speaker of the House of Delegates, the new name which had been given to the famed old Virginia House of Burgesses by the state's constitution of 1776. He was the worthy ally and successor of Peyton Randolph, the uncle of the more famous Edmund Randolph, who went from the speakership of the House of Burgesses to the Presidency of the first Continental Congress.

Much of the fortune inherited by George Wythe was lost during the Revolutionary War, when the British troops led by Cornwallis marched across Virginia and claimed all in their pathway. Many of his helpless slaves were captured and carried away to England, as were those of many other large land owners. The adjustment of claims for their loss proved to be one of the most interesting post-war issues, and furnished the motive for the failure or refusal of Virginia and her courts to recognize or enforce debts due British merchants by Virginia creditors until these stolen slaves had been paid for. As Chancellor of Virginia, he held that British creditors could sue in the courts of that state, a right which had been vigorously protested.

Jefferson, as Governor of Virginia in 1779, requested Wythe, who had taught law to both him and to John Marshall in their youth, to open a law department at the College of William and Mary. He accepted, and for twelve years was the inspiration and leading spirit of America's first organized law school. The building in which he taught, as well as his Williamsburg home, which was used as

Washington's headquarters during the Yorktown campaign in the fall of 1781, were remodeled in the Rockefeller restoration of Williamsburg. The career of Chancellor Wythe as a teacher of law only ended when he removed to Richmond in 1791 in order to be more closely in touch with the state government, which had been moved there twelve years before, where it was housed in the classic new state capitol of which Jefferson himself was the architect. Thomas Jefferson to the end of his days paid tribute to Wythe, his legal preceptor. He named one of his several Randolph grandsons reared at Monticello George Wythe Randolph in honor of his old teacher. As chance would have it, that grandson was Secretary of the Navy in the ill-fated Confederate government of the sixties.

While living in Richmond, Chancellor Wythe occupied much of his time as a private tutor of the classics, in which he was an accomplished scholar. Among those closely associated with him during those days was a tall young Virginian from Hanover County near Richmond, who bore the name of Henry Clay, and served as his secretary. Clay later studied law under Brooks, an attorney-general of Virginia, moved to Lexington, Kentucky, and became famous as speaker of Congress, Senator, Secretary of State, and thrice candidate for President. He never failed to acknowledge the debt he owed to Chancellor Wythe, who made the classics, first taught him by his mother, a great hobby. He found much satisfaction in teaching Latin and Greek to one of his precocious slaves.

Chancellor Wythe made up in the Virginia ratification convention for the opportunity he had lost at Philadelphia. He served as chairman of the Committee of the Whole and was a member of the committee which prepared the proposed amendments to the Constitution adopted at the close of the Virginia Convention. He was credited with the authorship of the amendments to the Constitution finally approved by the states, which assured freedom in religion and of the press, and the remaining eight of the first ten amendments to the Constitution were also largely taken from those proposed by Virginia and drafted by his committee.

George Wythe became Chancellor of Virginia in 1777 at the end of his career as a member of the Continental Congress, where he was



one of the Virginia signers of the Declaration of Independence, and occupied the position of Chancellor until 1797. Later in life he also aided in revising the laws of Virginia.

An unfortunate tragedy hung about his death, which occurred on June 8, 1806. His wife had preceded him to the grave many years before, he had no children and in his wife's memory, he not only gave freedom to his remaining slaves during his lifetime, but also gave them land upon which they might live. An unworthy nephew who had hoped to inherit his estate was incensed at his uncle's action, and after his death was charged with poisoning him. The nephew was tried on such a charge and acquitted, but the stain remained on the nephew's name in the popular mind.

The beloved Chancellor and teacher was buried beneath a simple monument in the churchyard of St. John's Episcopal Church in Richmond, now a national shrine in commemoration of Patrick Henry's address made there on March 20, 1775, containing the stirring words, "Give me liberty, or give me death."

#### *DR. JAMES McCLURG*

Patrick Henry declined to go as a delegate to the Convention at Philadelphia, after he had been chosen as one of Virginia's seven delegates, and the legislature finally selected Dr. James McClurg, of Richmond, and the state's most famous physician, to go instead. It was the only major public position Dr. McClurg ever held.

He was prevented from remaining long in Philadelphia by his professional duties, which came first with him, and he therefore had but little part in the making of the Constitution. He was one of the three delegates there with a medical education, and the only one of the three who followed that profession all of his life. James McHenry, of Maryland, and Hugh Williamson, of North Carolina, were educated as doctors and so served in the Revolutionary War, but both of them had long since given up that profession when at Philadelphia.

Dr. McClurg was a native of Hampton, Virginia, which decades later became best known as the seat of Hampton Institute where the great Negro leader, Booker T. Washington, was trained. That Doctor McClurg was an uncommonly able youth was proven by his

graduation from the College of William and Mary at fifteen years of age. One of the friends of his college days was a tall red-headed and freckle-faced youth from Albemarle County, Virginia, named Thomas Jefferson. McClurg and Jefferson each admired the other as boys and each had pride later in the high distinction the other won in his chosen field.

After completing his academic course McClurg was sent abroad for his medical education, which he pursued in London, Edinburgh and Paris. After spending several years in study abroad, he returned to Williamsburg, the capital city of Virginia and the great center of colonial culture.

He was soon recognized as the leading man of his profession in Virginia. Medical essays written by him were published in the best medical journals of Europe, as well as in America. When Thomas Jefferson became governor of Virginia, he requested his old college friend to assume the chair of Medicine and Hygiene at the College of William and Mary; at the same time he prevailed on his old law teacher, George Wythe, to head the new department of law at that institution.

When the capital of Virginia was moved to Richmond in 1779, and the seat of the government of Virginia and the residences of many of its leading citizens were changed, Dr. McClurg moved up to Richmond, about fifty miles away, where he soon won for himself the same professional success which he had won at historic Williamsburg. He was, as a citizen of Richmond, active in all its civic affairs as well as in his own profession.

The Philadelphia Constitutional Convention, to which he was sent in 1787 in place of Patrick Henry, had been in session less than thirty days when urgent calls from anxious patients in Richmond took Dr. McClurg home, and he did not return again to Philadelphia while the Convention was in session. In that time he made only a few speeches, but in one of them he spoke in favor of having the President serve during good behavior, which for a good man would be the equivalent of a life tenure.

After his return home, he again took up his professional work and had no part in the fight for ratification. During the thirty-eight remaining years of his life he was largely interested in his

own profession in Richmond and Virginia, and was the famous and beloved physician.

His death came in the line of duty on July 7, 1825. While on a hurried journey in Richmond to answer a call from a patient his carriage was overturned and he was killed.

### III

#### PENNSYLVANIA AND THE CONSTITUTION

**T**HE Pennsylvania delegation of eight members was the largest, the most cosmopolitan, and regarded by many as the ablest in the Philadelphia Constitutional Convention. Three of them, Robert Morris, James Wilson and Thomas Fitzsimmons, were foreign born; Benjamin Franklin and Jared Ingersoll were natives of New England; Gouverneur Morris was a transplanted New Yorker; George Clymer and Thomas Mifflin were the only native sons. All of its members lived in Philadelphia and all served without pay, for the state Assembly had failed to provide for such expense. Benjamin Franklin as the head of the state government was the nominal leader of the delegation, but left the active leadership largely to James Wilson, who next to Gouverneur Morris made more speeches than any other delegate present.

The cosmopolitan character of the Pennsylvania delegates in many ways accurately reflected the unique position of the "Keystone State" among the thirteen states. The colony had been one of the last to be founded: William Penn received his charter in 1680 in liquidation of a debt of £16,000 owed his father by the King, and his first settlers came out in 1681. Penn himself followed in 1682 with another group. He found three hundred Swedish settlers already located along Chesapeake Bay, but he found them steady and desirable and promptly confirmed their property rights and gave them citizenship.

Penn had founded the colony as a refuge for Quakers, to whose religious views he was also a convert, and his first immigrants were all of that sect. However, contrary to the Puritan policy in New England, he granted absolute liberty of worship not only to his own but to every other religion or sect which might choose to come to his colony. His lands he also sold on very liberal terms, reserving only a small quit-rent per acre to himself and his descendants, while

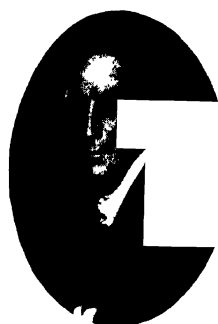
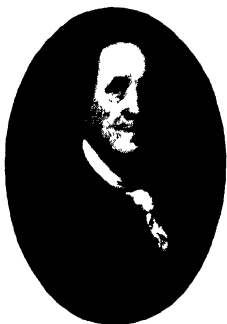
the government he established gave the colonists a controlling voice in legislation from the first, with only a power of veto in himself for life. His Indian policy was so uniquely mild and just that Quaker dress was said to be a better protection among the Indians than a musket, and the Indians felt that the highest compliment they could pay a white man was to say, "He is like William Penn."

William Penn benefited the least from his colony, for in all his long life he spent only four years on its soil. The rest of his time he spent in England maintaining his right to the colony in the courts, and he finally died in 1718 a poor man. But his colony prospered, and Philadelphia, whose site he had chosen in 1682 and whose streets were the first straight ones in America, had in four years surpassed New York in population, and remained the commercial and cultural center of the colonies until the beginning of the nineteenth century. His liberal government and generous land policy, and above all the strictly maintained religious freedom, drew a vast variety of settlers. Racially they included English, Scotch-Irish, Welsh, Swedes and Palatine Germans; the creeds included Lutherans, Presbyterians, Dunkards, Moravians, Baptists, Anabaptists, Pietists, Mennonites, Methodists, Episcopalians, Roman Catholics and Jews. They all got along together remarkably well, except that the Germans and Scotch-Irish often divided on political issues, with the Quakers usually siding with the former. At the time of the separation from England the German element was so important that the Continental Congress seriously considered proposals for two official languages for the nation, German in addition to English. There were the usual bickerings in later years between the citizens of Pennsylvania and its indifferently good governors, but in spite of the diversity of its make-up the colony was known as the most peaceful, contented and democratic of all the thirteen.

By the time of the Revolution Pennsylvania ranked with Massachusetts and Virginia in importance, wealth, and population. In the spring of 1776 it threw off the government of England, and in strenuously contested legal proceedings finally made a settlement with the heirs of William Penn by which the latter gave up all their rights; the colony was represented by its leading citizen, Benjamin Franklin, the Penn heirs by John Dickinson. That summer also a



*Nath Morris, Govd Morris James Wilson*



*Jared Ingersoll B. Franklin Geo. Clymer*



*Tho. Simpson*

*Thomas Mifflin*



state government was established which embodied a number of original ideas, chiefly Franklin's. The Chief Executive was called President, with a Council of twenty-four to advise him; the legislature (called the Assembly) was popularly elected and consisted of only one chamber, though the Council also had some voice in legislation. Franklin almost succeeded in inducing the Philadelphia Constitutional Convention in 1787 to make the Federal Congress a single body, but in order to help work out the "Connecticut Compromise" the Convention decided on two chambers, one representing the states, and representation in the other being based on population. This Pennsylvania constitution lasted until 1790, shortly after Franklin's death, when his party disintegrated and a new constitution was adopted more nearly like those in the other states.

Pennsylvania carried its full share of the burden of the Revolution. Its leading citizens from the first took an active part; Robert Morris and the other wealthy men of the seaboard did their utmost to sustain the tottering finances of the Continental Congress; Philadelphia was the Revolutionary capital after New York was taken by Howe, and was itself all one winter in the hands of the English; much of the fighting took place on Pennsylvania soil, and the rich and peaceful Wyoming River Valley was almost denuded of settlers and its farm-houses burned to the ground by a particularly fierce raiding party of English and Iroquois. After the Revolution the state was accused by its neighbors of being particularly severe in its policy of imposing duties on goods shipped from other states, but the fact remained that it was one of the two or three states which continued to pay all or most of the requisitions made on it by the Continental Congress, and its leading citizens were among the most ardent in supporting the movement for a new national government which culminated in the Constitutional Convention.

Pennsylvania was not the first state to ratify the Constitution, but this was not the fault of the friends of the Constitution in Pennsylvania, for it was the first state to consider a ratification convention. The Constitution was signed on the first floor of Independence Hall on September 17, 1787, and the very next morning President Franklin and his seven fellow-delegates went before the



Pennsylvania Assembly, which was then in session on the second floor of Independence Hall, and asked that a state convention be called to consider ratification.

Their visit was premature, since the Continental Congress, which should first have made such a request of the states, had not yet officially been notified of what the Convention had done and had not submitted the Constitution to the states for their consideration. But George Clymer and Thomas Fitzsimmons were also members of the Assembly, and Mifflin was its Speaker, and through them the leaders for ratification attempted to rush a resolution through the Assembly calling for a convention to meet on the following November 20th. When the members of the Assembly who were opposed to such hasty action saw the plan, nineteen of them absented themselves immediately from the legislative chamber and no vote could be taken for lack of a quorum. The next morning there was again no quorum, and James M. Calmont, of Franklin County, and Jacob Wiley, of Dauphin County, had to be dragged from their hotel rooms and arbitrarily counted as present before the deliberations could proceed.

But in the last minute, the proceedings could progress in orderly fashion. As fate would have it, the message from the Continental Congress in New York conveying the official request for the state legislatures to arrange for ratification conventions reached Philadelphia on the day preceding the last day the Assembly was in session.

The summary action taken by the friends of the Constitution in arranging for so early a ratification convention did not help their cause in the campaign to elect delegates. Franklin himself, who was President of the state and had helped draft Pennsylvania's constitution, was defeated as a delegate, and out of the eight members of the Pennsylvania delegation at the Constitutional Convention only one, James Wilson, served as a member of the state ratification convention.

The fight in the Pennsylvania convention was largely one between the delegates from eastern and western Pennsylvania, the former supporting ratification and the latter opposing it.

An active leader for ratification was Anthony Wayne, of Revolu-

tionary War fame, who later lived in Georgia, served in the second United States Congress from that state, and rounded out his career fighting Indians in what is now the state of Indiana.<sup>1</sup> Another delegate was Timothy Pickering, a son of Massachusetts, then living very simply in Luzerne County, Pennsylvania, who later held three different cabinet offices during the administration of George Washington and finally a senatorship from Massachusetts. Dr. Benjamin Rush, the great doctor-statesman, was also on hand as a delegate. William Findlay was the leader of the forces opposed to ratification.

As it happened, the delegates from the counties of Washington and Franklin, the namesakes of the two greatest men on the floor of the Convention which had written the Constitution, were almost solidly against ratification. Washington County was to be a few years later the seat of the Whiskey Rebellion when Washington was President, the first armed revolt against the authority of the United States. One of the delegates who opposed ratification bore the name of Abraham Lincoln, and hailed from Berks County where Daniel Boone was born. (The Lincolns and Boones were intermarried.)

The convention met in the legislative chamber of the old capitol at Philadelphia and elected Frederick A. Muhlenberg, of Montgomery County, a Lutheran minister and former soldier, as President. Muhlenberg, a fine Pennsylvania Dutchman, was destined to be chosen later as the first speaker of the Federal House of Representatives provided for in the new Constitution.

The debates in the Pennsylvania convention were long and in many cases very able. James Wilson was at his best as the great expounder and defender of the Constitution, and the final victory on December 12th, when the Constitution was ratified by a vote of forty-six to twenty-three, was due in large measure to his skill and ability. No single leader in the fight for ratification other than Hamilton in the New York convention excelled him in this arduous work. Wilson was ably seconded by Thomas McKean, who had been the first President of the Continental Congress after it had become a legally organized legislative body.

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<sup>1</sup> Wayne was buried at Erie, Pa.

But though Pennsylvania had called the first state convention and was the first state to meet to consider ratification, its little neighbor and stepchild, Delaware, had stolen a march on it, had met on December 7th, and after little discussion had ratified the Constitution unanimously.

The Pennsylvania ratification convention failed to make any proposals for amending the Constitution, although the delegates from the western sections of Pennsylvania, who had opposed ratification, wished them. Accordingly, after more than the required number of states had ratified the Constitution and Philadelphia had enthusiastically celebrated the historic event on the previous Fourth of July, a group of thirty-three western Pennsylvania leaders and a few from Philadelphia met at Harrisburg on September 3, 1788, to express their objections to the Constitution and to suggest amendments to it. Among those present was Albert Gallatin, a native of Switzerland, who as a disciple of the anti-Federalist, Thomas Jefferson, rose to eminence later, first in the Senate of the United States, where Rufus King once kept him from being seated, and finally as Secretary of the United States Treasury for twelve years.

The resolutions adopted at Harrisburg in regard to the new national government and the Constitution were:

"1. Resolved, That it be recommended to the people of this state to acquiesce in the organization of the said government; but, although we thus accord in its organization, we by no means lose sight of the grand object of obtaining very considerable amendments and alterations, which we consider essential to preserve the peace and harmony of the Union, and those invaluable privileges for which so much blood and treasure have been recently expended.

"2. Resolved, That it is necessary to obtain a speedy revision of said Constitution, by a general convention.

"3. Resolved, That in order to effect this desirable end, a petition be presented to the legislature of this state, requesting that honorable body to take the earliest opportunity to make application, for that purpose, to the new Congress.

"The petition proposed is as follows:

" 'To the Honorable the Representatives of the Freemen of the Commonwealth of Pennsylvania, In General Assembly met:

“The petition and representation of the subscribers humbly show—

“That your petitioners possess sentiments completely federal; being convinced that a confederacy of republican states, and no other, can secure political liberty, happiness, and safety, throughout a territory so extended as the United States of America. They are well apprized of the necessity of devolving extensive powers to Congress, and of vesting the supreme legislature with every power and resource of a general nature; and consequently they acquiesce in the general system of government framed by the late Federal Convention,—in full confidence, however, that the same will be revised without delay; for, however worthy of approbation the general principles and outlines of the system may be, your petitioners conceive that amendments in some parts of the plan are essential not only to the preservation of such rights and privileges as ought to be reserved in the respective states, and in the citizens thereof, but to the fair and unembarrassed operation of the government in its various departments. And as provision is made, in the Constitution itself, for the making of such amendments as may be deemed necessary, and your petitioners are desirous of obtaining the amendments which occur to them as more immediately desirable and necessary, in the mode admitted by such provision,—

“They pray, that your honorable house, as the representatives of the people in this commonwealth, will, in the course of your present session, take such measures as you, in your wisdom, shall deem most effectual and proper to obtain a revision and amendment of the Constitution of the United States, in such parts, and in such manner, as have been or shall be pointed out by the conventions or assemblies of the respective states; and that such revision be by a general convention of representatives from the several states in the Union.

“Your petitioners consider the amendments pointed out in the propositions hereunto subjoined as essentially necessary: and as such they suggest them to your notice, submitting to your wisdom the order in which they shall be presented to the consideration of the United States.

“The amendments proposed are as follows, viz.:—

“(1) That Congress shall not exercise any powers whatever, but such as are expressly given to that body by the Constitution of the United States; nor shall any authority, power, or jurisdiction, be assumed or exercised by the executive or judiciary departments of

the Union, under color or pretense of construction or fiction; but all the rights of sovereignty, which are not by the said Constitution expressly and plainly vested in the Congress, shall be deemed to remain with, and shall be exercised by, the several states in the Union, according to their respective constitutions; and that every reserve of the rights of individuals, made by the several constitutions of the states in the Union, to the citizens and inhabitants of each state respectively, shall remain inviolate except so far as they are expressly and manifestly yielded or narrowed by the national Constitution.

“(2) Article 1, section 2, paragraph 3. That the number of representatives be, for the present, one for every twenty thousand inhabitants, according to the present estimated numbers in the several states, and continue in that proportion until the whole number of the representatives shall amount to two hundred; and then to be so proportioned and modified as not to exceed that number, until the proportion of one representative for every thirty thousand inhabitants shall amount to the said number of two hundred.

“(3) Section 3, III. That senators, though chosen for six years, shall be liable to be recalled, or superseded by other appointments, by the respective legislatures of the states, at any time.

“(4) Section 4, IV. That Congress shall not have power to make or alter regulations concerning the time, place, and manner of electing senators and representatives, except in case of neglect or refusal by the state to make regulations for the purpose; and then only for such time as such neglect or refusal shall continue.

“(5) Section 8, V. That when Congress shall require supplies, which are to be raised by direct taxes, they shall demand from the several states their respective quotas thereof, giving a reasonable time to each state to procure and pay the same; and if any state shall refuse, neglect, or omit to raise and pay the same within such limited time, then Congress shall have power to assess, levy, and collect the quota of such state, together with interest for the same, from the time of such delinquency, upon the inhabitants and estates therein, in such manner as they shall by law direct; provided that no poll tax be imposed.

“(6) Section 8, VI. That no standing army of regular troops shall be raised or kept up in time of peace, without the consent of two-thirds of both houses in Congress.

“(Section 8, VII. That the clause respecting the exclusive power of legislation over a district not exceeding ten miles square be quali-

fied by a proviso that such right of legislation extend only to such regulations as respect the police and good order thereof.

“(7) Section 1, VIII. That each state, respectively, shall have power to provide for organizing, arming, and disciplining, the militia thereof, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, but when in actual service, in the time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject to such fines, penalties, and punishments, only, as shall be directed or inflicted by the laws of its own state; nor shall the militia of any state be continued in actual service longer than two months, under any call of Congress, without the consent of the legislature of such state, or in their recess, the executive authority thereof.’”

#### BENJAMIN FRANKLIN

Just as James Madison is called the Father of the Constitution, so may Benjamin Franklin properly be called its Grandfather.

Nevertheless, although Franklin was President of Pennsylvania when selected as a delegate to the Constitutional Convention, he had largely lived out his life by that time, took only a relatively minor part in the actual work of the Convention, and retired from all public activities one year later. He was then the Nestor of American statesmen, eighty-one years of age, and only attended the daily sessions of the Convention with great physical difficulty.

Benjamin Franklin had done his most important work toward creating the new nation's articles of government thirty-three years before in the famed Albany conference, where he first fathered a plan for the union of the colonies. Though his plan was not then acceptable either to the King or to the colonies, it was the framework of his plan offered twenty-one years later and also rejected by the Continental Congress, but which in 1776 became the model for the Articles of Confederation drafted by John Dickinson and his committee. The Articles of Confederation in turn were more largely drawn on than any other instrument in drafting the Constitution of 1787.

Franklin had thus been busy trying to solve the problems of the unorganized colonies before Dayton, Spaight, Charles Pinckney, or

even Alexander Hamilton were born, and at a time when Madison, Gouverneur Morris, and Governor Randolph, of Virginia, had been small lads in their first trousers. He was the oldest signer of the Constitution, just as he had been the oldest signer of the Declaration of Independence eleven years before.

In appearance, Dr. Franklin was middle sized; in earlier years he had been athletic, and he was noted for his benign smile and simple Quaker dress. Neither he nor the great Washington, the chairman of the Constitutional Convention, were college men; nevertheless no member of the Convention approached him in renown as a scholar. His literary interests and his scientific researches had made him one of the world's great intellectual figures. His writings were read in every country; he had mastered the Spanish, French, and Italian languages; he had delved deeply into philosophy. He held honorary degrees from Yale and Harvard, had been given the first honorary degree (M.A.) ever awarded by the College of William and Mary in Virginia, and the Universities of Edinburgh and Oxford had each made him a Doctor of Laws. His picture hung in the homes of rich and poor alike throughout Europe and America, and he was the intimate of princes, royal ladies, and statesmen. He had often been the target for slander and villification, but after these had done their worst he yet stood almost alone in his noteworthy achievements. There was probably no one at the Philadelphia Convention except perhaps Washington himself who was better able to lend dignity or respect to its critical labors than this internationally venerated figure.

Benjamin Franklin was a native of Boston, where he was born January 17, 1706. He was the fifteenth child in a family of seventeen born to his English father, who had migrated to America about twenty-five years before. His father's home was across the street from the Old South Church, which is still standing, where he was a tallow-candler and soapmaker.

His father's business did not appeal to the studious and imaginative young Benjamin, who was fascinated by the great ships in the harbor and would have liked to go to sea. Instead at twelve years of age he was apprenticed to an older brother, James, who was a printer in Boston and the publisher of the *Courant*, the second news-

paper to be published in America. But the brothers could not agree, and after five stormy years the book-loving younger brother, whose reading had by this time included not only the proverbial *Pilgrim's Progress*, but even Locke's *Essay on the Human Understanding*, and Xenophon's *Memorabilia*, took leave of the family, the business, and the city of Boston, and went to Philadelphia, which thereafter became his home.

In Philadelphia he quickly secured a position as a practical printer and made many friends, including Deborah Read, who, after a short-lived marriage to another, was to become Mrs. Benjamin Franklin. In later years she was to recall with amusement how she had watched Franklin walk the streets of Philadelphia with his loaf of bread under his arm, a sophisticated young printer yet in his teens.

At eighteen Franklin was persuaded by William Keith, the Royal Governor, to go to London and further prepare himself to become the public printer. He was deceived by the alluring promises made to him by Keith and only lived and worked in London for two years, after which he returned to Philadelphia and was soon established as a printer, publisher, and prominent civic leader.

He was married to Deborah Read in 1730 in his twenty-fourth year. Deborah Read accepted not only Franklin but Franklin's little illegitimate son, William, whom she raised up tenderly together with their only living child, a daughter whom they called Sarah. They also had one son named Francis to whom he was devoted but who died when very young, a loss to which the father was never fully reconciled. Deborah came from humble origin, was content to be the wife of so popular and promising a husband, and kept for him a house noted for its hospitality and its capable housekeeper. She called her husband "Pappy," was afraid of the sea, and never went abroad with him in the many years he later spent in both England and France. Instead she stayed by the fireside, raised Sarah, and sent her husband apples, nuts, Pennsylvania cakes, and striped squirrels, in return for which he sent his "Debbys" long letters, Lyons silks, Kashmir shawls and French chinaware. She died an old woman in 1774 before her great husband had achieved his highest renown.

The career of Franklin for the remaining sixty-four years of his



life, following his marriage, was one of ever-increasing fame. On a bronze tablet which appears near the simple slab over his grave in Christ Church Cemetery, at Fifth and Arch Streets, in Philadelphia, is a chronological record of his career, as follows:

"In 1729 editor of the Gazette, 1730 appointed public printer, 1731 founded first public library in America, 1736 organized first fire department in America, 1737 postmaster at Philadelphia, 1738 member of assembly, 1741 started magazine, 1742 invented the Franklin open stove, 1743 organized the American Philosophical Society, 1749 founded the University of Pennsylvania, 1752 first electrical experiments with lightning rods, 1753 deputy postmaster general (Alexander Spottswood, of Virginia, was the postmaster general), 1754 leader of the Albany Conference, 1756 Colonel French and Indian War, 1757-64 agent in England for Pennsylvania-New Jersey-Massachusetts-Georgia, 1764 speaker Pennsylvania Assembly, 1769 President American Society in England, 1775 delegate to Continental Congress—chairman of committee of safety in Pennsylvania—postmaster general of the colonies, 1776 signer of Declaration of Independence—President of Pennsylvania state constitutional convention—appointed commission to court of France, 1778 negotiated alliance between France and America and became minister to France, 1783 negotiated treaty of commerce with Sweden and in 1785 a similar treaty with Prussia, 1787 member of Constitutional Convention."

The official honors enumerated above are more extensive than those won by any other American of his day, yet they fail to mention that he was one of the commissioners who signed the Treaty of Peace with England at the close of the Revolutionary War, and that for three years (1785-1788) he was the President or chief executive of Pennsylvania.

Franklin first came into fame through his publication called *Poor Richard's Almanac*, which homely little sheet began in 1732 when he was only twenty-six years of age, and ended in 1757 when he first went to London as a representative of the American colonies. The simple, robust philosophy expressed therein made his name a household word wherever his almanac was read. The almanac had a circulation of ten thousand copies, an enormous one for its day.

In 1746, at the age of forty, the now well-to-do Benjamin Franklin revisited Boston and was introduced to a puzzling glass tube brought from Europe which, when rubbed with a cloth, made sparks which lit the rum on an omelette or fired a pinch of gunpowder in a lady's hand. He took one home with him, entertained his friends with it in his parlor, and eventually became so fascinated by its activities that he retired from business and devoted all his time to electrical research. In seven years he was the greatest authority in the world on the subject of electricity, had discovered and named its positive and negative qualities, had established that the electrical charge in a Leyden jar resides on the surface of the glass, and had built the first storage battery of glass plates joined by lead armatures. At a picnic he sent an electric current across the Schuylkill River and lit a pan of brandy using only the water of the river as a conductor, electrocuted a turkey, roasted it on an electrically turned spit over an electrically kindled fire, and discharged a salvo of musketry by means of a storage battery just as the toasts were being drunk. He nearly killed himself once by accidentally sending a charge from a row of Leyden jars through his head, and refuted the then prevailing theories about lightning being explosions of sulphurous gases by flying a kite in a storm and obtaining a shock from the string when lightning played about the kite. He was not killed this time either, but he wrote up his discoveries for European journals and set the fashion for kite-flying in storms which resulted in the death of Dr. Richman, of St. Petersburg.

In 1753 the Royal Society of England sent him its medal by the newly-arrived Captain Denny, Royal Governor of Pennsylvania. At the presentation Governor Denny got a bit tipsy on the generously flowing Madeira and confided thoughts to the forty-seven year old Franklin which ended his scientific seclusion and eventually sent him off to England on affairs of more worldly import.

Franklin altogether spent sixteen years of his later life in England. He went to London in 1757 as agent for Pennsylvania and remained five years. After two years back in America he went again in 1764 as the agent not only for Pennsylvania, but also for Georgia, New Jersey, and Massachusetts, his services to Georgia being partially rewarded by a grant of 2,000 acres of wilderness land.

On his first visit in 1757 he was accompanied by his son, William, who was far from being the plain citizen his father was known to be. On this visit Oxford made the father a "Doctor," a title which he thereafter carried the rest of his life, and also gave the son the honorary degree of Master of Arts. Soon after the father's return to America in 1762 William Franklin was made Royal Governor of New Jersey, a position he held until 1776, when he refused to yield to the Revolutionary spirit, was forced out of his seat as Governor, and was succeeded in the governorship by William Livingston. He was paroled to Governor Trumbull, of Connecticut, the only Royal Governor to espouse the cause of the colonists in the Revolution, and shortly thereafter went back to England where he spent his remaining years. When his father was minister to France a few years later they met on English soil, but after a short visit together they separated and never met again, either in person or in their political points of view.

Benjamin Franklin's visit to England in 1764 lasted eleven more years. He was official representative at the Court of four of the colonies, and among other things presented a petition from the people of Pennsylvania asking that the "unfair privileges and influence" of the traditional proprietors, the Penn family, be abolished and the colony made a royal province. In addition, he was able to obtain the repeal in 1766 of the Stamp Acts, so obnoxious to his fellow Americans, which further enhanced his reputation at home.

This visit to England began one year after the peace of 1763, which ended the Seven Years' War in Europe and the French and Indian War in America. France had lost these wars to England, her traditional rival, and the price she had paid in America included the cession of Canada and all the territory south of the Great Lakes and east of the Mississippi River to England (except New Orleans, which as part of Louisiana she had ceded to Spain); in Asia France had lost most of her Indian possessions. Benjamin Franklin's presence in London, in addition to his duties as official representative of four of the colonies, was for the purpose of representing a syndicate of wealthy Pennsylvanians who wished to obtain grants to a large area in this western region for resale to settlers from the by now thickly populated seaboard districts. In this he only partially succeeded,

for by Orders in Council settlement was prohibited in the vast territory west of the Appalachian Mountains for the double purpose of protecting the King's other subjects in the region, the Indians, and to preserve the fur trade, which a few years later was netting English firms the handsome sum of 80,000 pounds a year by way of Quebec alone.

If given a little more time these Orders in Council might have been withdrawn, for numerous English interests were also urging that the vast region west of the Appalachian Mountains be sold to settlers. Just before the outbreak of the Revolutionary War the regulations were actually relaxed somewhat as to certain parts of the territory west and north of Pittsburgh, but the outbreak of hostilities put an end to the matter. These Orders in Council did much on the same hand to bring the few western colonists into the war on the side of the revolting seaboard colonies, and on the other to keep the Indians of the region loyal to the King and dangerous enemies to the Revolutionary cause.

Franklin had hitherto been loyal to his King. But as he learned to know England better his views gradually hardened. As early as 1767, when the Townsend duties were enacted, he had written, on the subject of England's right to tax the colonies:

"The more I have thought and read on the subject, the more I find myself confirmed in the opinion that no middle doctrine can be well maintained, I mean not clearly with intelligible arguments. Something might be made of either of the extremes: that parliament has a power to make *all laws* for us, or that it has a power to make no laws for us; and I think the arguments for the latter more numerous and weighty than those for the former."

In 1774, partly as a result of his views, the English authorities dismissed him as deputy postmaster-general for America, a position he had held since 1754.

When Franklin returned to America in 1775 he found the colonies at war and ready to secede from England over the Stamp Act and other English tax measures. He, a loyal friend of England, at first argued for an amicable adjustment of the troublesome tax ques-

tion and submitted to the Congress a revised form of his Albany plan of twenty-one years before, which would have provided for an American dominion under the control of England. This the Congress quickly rejected, Franklin signed the Declaration of Independence a year later along with the other eight members of the Congress from Pennsylvania, and thereafter allied himself whole-heartedly with the forces which led the fight for independence.

Franklin's first direct service to the cause of rebellion came in 1775, when he, Samuel Chase, and Charles Carroll, of Carrollton, were sent to Canada to attempt to bring Canada into the coming struggle on the side of the revolting colonies to the south. With them went John Carroll, a cousin of Charles Carroll, who was a Catholic priest and hoped to be able to appeal to the Catholic French population of Quebec. The mission returned without achieving its object.

Franklin's first big fight in Pennsylvania politics came in the early part of 1776 in the contest over the new leadership in Pennsylvania. Dickinson as the spokesman of the old proprietary groups was sternly opposed by Franklin, who was America's first champion of the masses in their struggle against the classes. He took the position that the old proprietors should withdraw from the government of the colony, and that the King should establish a democratic form of government presided over by a Royal Governor as was the case in a majority of the other colonies. Franklin and his followers dominated the Convention, which eventually declared for the entire independence of the state from England, wrote Pennsylvania's first constitution, and chose Joseph Reed as the state's first President.

In the meantime Franklin had continued to be active in affairs of the Continental Congress and had become the chairman of the Committee on Foreign Correspondence, the progenitor of our State Department. France, the traditional enemy of England, saw in the revolt of the English colonies an opportunity to revenge herself and recoup in part her losses of 1763, and was showing considerable secret interest in the progress of the rebellion. The seventy year old Franklin, with years of European experience in the highest circles already to his credit, was accordingly sent as commissioner to France on what was to prove his greatest and most important service to his country. He was to remain away for nine years, and with him went

young Temple Franklin, his illegitimate grandson by an illegitimate son to act as his secretary and companion. His services in France included the immediate arrangement of secret credits for supplies of war from various sources for the impecunious colonies, the signing of a secret Treaty of Alliance and of Commerce in 1778 with the French Crown against England, and his work as one of the peace commissioners in drafting the Treaty of Peace when the war was over.

The funds raised by Franklin were in part gifts from the French and Spanish Crowns, in part loans from French tax-farmers and others, and were of indispensable aid to the colonists. But the transactions were all of a secret nature, for France at first tried to avoid an open break with England (she later also declared war), and when it came time to repay the moneys there was considerable misunderstanding as to what was to be repaid and what was not. He could not recall the details of all the transactions, and after the war Beaumarchais, the French secret agent and the versatile author of the librettos for the operas "Figaro" and "The Barber of Seville," was ruined financially when he personally had to make good on a number of notes which he had endorsed. Beaumarchais' heirs were compensated in part many years later by the American Government, but only after long and arduous petitioning.

The Treaty of Alliance with France came in the nick of time for the revolting colonies, and the first news of it in America heartened the troops at Valley Forge to hold out during the remainder of the long inclement winter. The alliance brought French troops and two French fleets to America which were indispensable in cutting off the English troops from their supplies; the first fleet under d'Estaing succeeded in doing little, but in 1787 Cornwallis' surrender at Yorktown was due primarily to the presence of de Grasse's French ships, which prevented an English fleet from relieving Cornwallis' penned up land forces.

Franklin's duties in France during these years were arduous. At least one-third of his correspondence to and from America was intercepted by the British Navy, and he was often without word or instructions from home for months at a time. The excellently organized English Secret Service knew his every move through the medium of spies in his own household, among whom was his personal friend

and confidential man, Edward Bancroft, whose regular messages to the English Government were doubtless the reason why the shoes and other supplies sent to Valley Forge were intercepted by English vessels. He was warned by his friends, but refused to mistrust Bancroft to his last days, although today his guilt is clearly established in the published records of the English Secret Service.

The often desperate Robert Morris and others in charge of the colonies' finances in America many times drew on Franklin knowing he also was without funds, but hoping that when the drafts arrived he would be able to borrow the money somewhere with which to meet them. He carried the load of official duties virtually alone, for Silas Deane, of Connecticut, who had been sent over at Franklin's request as business agent for the Congress, had had to be sent home for irregularities in his accounts, and the stern and uncompromising John Adams who replaced Deane was sent off to Holland because he could not learn to ingratiate himself with the unmoral French Court. Others whom Congress sent over from time to time also were of little service, for they either could not get along with Dr. Franklin or the French Court refused to receive them.

The Treaty of Alliance had specified that neither France nor the American colonies make a separate peace with England, but when the opportunity presented itself Franklin shrewdly agreed to ignore this agreement. France would have liked to have won some colonial advantages for itself out of the bargain and would have liked to have regained Gibraltar for Spain, but all this was ignored when the peace treaty was finally signed in 1783 and ratified by the Congress in January of 1784.

King Louis XVI gained nothing by the war, which cost his treasury 1,200,000,000 livres; *when in 1786 it was for the first time publicly announced in France that the national deficit had increased in the twelve years of Louis' reign by the sum of 1,250,000,000 livres*, Louis' wife, Marie Antoinette, began for the first time to be shouted down as "Madame Deficit" on the streets of Paris; on August 8, 1788, the first Estates General in the memory of most living Frenchmen was called for May 5, 1789, six days after Washington's inauguration as the first President of the United States under the new Constitution; on July 14th the Bastille was stormed; on October 5th

and 6th a rabble of Parisian women marched to Versailles and brought their King and Queen back to Paris and to prison; in the spring and fall, respectively, of 1793, before the expiration of Washington's first term, the proud Bourbon and Hapsburg heads of Louis and Marie Antoinette rolled into the gory baskets of "Madame Guillotine," the "National Barberess" of the French Revolution.

But the court of France was mercifully unaware of these tragic events of the future and his last years in France were eventful years in his life. He was the great man of the New World, the backwoods philosopher adored by the French women, and a hero among the French savants. He was treated as one of the wise men of the world, was made a member of the French Academy of Science, and was honored by innumerable other learned societies in France, England, Holland, and other European countries. When he returned to America in 1785 he was among the most beloved diplomats of all Europe. Thomas Jefferson succeeded him in France for five years, returned to the United States to become the nation's first Secretary of State (an enlargement of Franklin's first work on the Committee on Foreign Correspondence), and enroute to assume his duties visited Franklin only a short time before his death.

A few weeks after Franklin's return from France he was chosen President of the Council of Twenty-Five which performed the executive duties in Pennsylvania under its constitution of 1776. This Constitution, sponsored by him, was discarded in 1790, the year of Franklin's death, when Pennsylvania adopted a new charter and chose Thomas Mifflin, who had succeeded Franklin as President, as its first Governor.

Franklin was already a tradition in the minds of many Americans when out of respect for his age and eminence he was sent by Pennsylvania to the Constitutional Convention in 1787. Many of the younger delegates present looked for the first time at this patriarch of the nation, who had been active in drafting articles of government before some of them were born. Before the Convention formally convened he entertained as many as were present in Philadelphia at a dinner (he noted at the time that this cost him less than it would have if he had waited until more were present). On the floor of the Convention he proved to be one of its great moderating influences.



He attended the sessions only with great physical difficulty because of his advanced years, and his comparatively few but telling speeches were read for him by James Wilson.

One of Franklin's specific proposals was that Federal officials should serve without pay, another that there be only one chamber in the national legislature. Both of these proposals were rejected by the Convention, as was also his devout proposal, when the members seemed hopelessly deadlocked, that thereafter a chaplain open each day's sessions with prayer for divine aid in their deliberations. Nevertheless his dignified, conciliatory, and often witty words at critical moments diverted many harshly spoken thrusts and soothed many ruffled tempers, and when it finally came time to sign he did so with the conviction that a new sun was rising for the hitherto discordant nation.

It is difficult if not impossible to pass any final estimate on so manifold a character as Dr. Franklin's. Certainly his own generation, which knew him best, praised him unqualifiedly, and at his death on April 17, 1790, after many months of pain, all criticism was stilled. High and low alike in all nations paid tribute to his memory, and his funeral oration in Philadelphia was delivered by one of his former foes, Dr. William Smith, the former President of the Academy founded by Franklin which later became the University of Pennsylvania. In France a seller of statuettes of Franklin made from stone from the shattered Bastille became rich from their sale.

In spite of the provincially bred Franklin's amazing ability to play the adulated worldling in the effete court at Versailles, his true measure is to be found in his intelligent, homely, witty and liberal-minded rules of personal conduct laid down in his many pithy sayings. To him, "an empty sack could not stand upright," and he kept before himself for daily meditation the following list of virtues: Temperance, Silence, Order, Resolution, Frugality, Industry, Sincerity, Justice, Moderation, Cleanliness, Tranquillity, Chastity, Humility. He advised all his followers to imitate Jesus and Socrates, but while born a Presbyterian and always highly devout, he refused steadfastly to commit himself to any rigid sectarian or denominational alliance. He was a warm friend of Whitfield, the great English evangelist in America, aided in building him a tabernacle in Phila-

delphia, and published his sermons. He was a devoted Mason, did much to promote Freemasonry in America, and it is possible that the precepts of the order swayed his life more than any other single influence. One of his favorite prayers was as follows:

"O Powerful Goodness! Bountiful Father! Merciful Guide! Increase in me that wisdom which discovers my truest interest. Strengthen my resolutions to perform that which wisdom dictates. Accept my kind offices to Thy other children as the only return in my power for Thy continued favors to me."

With all his precepts and his love of the philosophical attitude, Dr. Franklin was one of the most intensely practical men who ever lived. He knew the value of wealth and himself accumulated a goodly store, leaving an estate of \$150,000 at his death: he only counselled its honest acquisition and wise spending. Besides dabbling in electricity, a study which he never completed, he invented innumerable practical devices, including the lightning-rod and a stove which bears his name, and when the first brooms made of broom-corn were received in America he gave a friend some of the seeds which still clung to a broom he had bought, from which beginnings came the broom-corn industry in America. He studied the currents of the sea and the effects of climate on civilization, experimented with lighter-than-air balloons, and if living today would have been keenly interested in stratosphere flights in search of further meteorological knowledge.

Benjamin Franklin was America's first great publisher, its greatest diplomat, the father of the democratic idea in America, and one of the founders of our government. He did more for Philadelphia and Pennsylvania than any other one citizen, and only Washington excelled him in service to the nation as a whole. His sun was a setting sun when the Constitution was written, but he had done his indispensable preliminary work many years before, and he was truly one of the greatest builders of our constitutional system of government.

Benjamin Franklin's wife, his devoted "Debby," had died in 1774. Sarah, his only living legitimate child, had married Richard Bache, a prominent Philadelphia merchant, and was the mother of eight chil-

dren, including the unfortunate Benjamin Franklin Bache. Young Bache and Temple Franklin idolized their grandfather, and both were at his bedside when he died. Young Temple Franklin, who had been with his grandfather in France several years before and who had been defeated for the secretaryship of the Philadelphia Constitutional Convention, himself passed away a few months later.

Young Benjamin Franklin Bache also did not survive his grandfather by many years. When George Washington refused to appoint him as the first postmaster-general and chose instead Habersham, an obscure Georgian, Bache became Washington's bitterest enemy. The *Aurora*, a Philadelphia paper published by him, denounced Washington on all occasions, and rejoiced in large type when Washington quit the Presidency on March 4, 1797. Bache was one of the victims of the Sedition Acts of John Adams' administration. One of his descendants was in the Senate of the Republic of Texas when it voted to be annexed to the United States in 1845.

#### JAMES WILSON

The name of James Wilson should be better known to all students of American history, for his name belongs in any list of the "big four" among the leading men who assembled at Philadelphia to write the Constitution. No less an authority than James Bryce, author of *The American Commonwealth*, places James Wilson among the greatest political thinkers of his day. One admiring contemporary biographer in describing him said, "He has the vivacity of a debater, the observations of a scholar, the analysis of a jurist, and the research of a philosopher."

Wilson was a native Scotchman who came to America and located in Philadelphia less than twenty-five years before the Constitution was written. He was one of the eight delegates who represented the State of Pennsylvania in the Constitutional Convention, all of whom signed the newly framed Constitution at the end. He was born near Aberdeen, Scotland, September 14, 1742, of not very well-to-do Scottish parents who made it possible for their brilliant young son to attend the Universities of Glasgow, Edinburgh, and St. Andrews, to which latter university he won a scholarship when only twelve years of age. Among Wilson's college classmates were Adam Smith, whose

book, *The Wealth of Nations*, is known to all students of government, and Hume, Blair and Robinson, all names to be reckoned with in the development of the liberal political philosophy of that day. Another schoolmate was Watt, the inventor of the steam-engine.

When twenty-three years of age young Wilson came to America, landing in New York when that city was echoing with the protests of the Stamp Act Congress meeting there in 1765, and the people soon to rise in rebellion against English tyranny. He then went to Philadelphia, where he had a letter of introduction to Richard Peters, the Rector of old Christ Church, where members of the Penn family had worshiped and which is still standing. Richard Peters had been a valued aid to Benjamin Franklin in his plans at Albany, N. Y., in 1754, for a closer union of the Colonies.

During the first two years of his life in America, James Wilson served as a tutor in Latin in the family of Bishop White, the first Episcopal Bishop of Pennsylvania. He also served for a time as a teacher of English Literature in the New College of Pennsylvania, now known as the University of Pennsylvania, where he received an M.A. degree. During that time he studied law under John Dickinson. For the next ten years he lived at Carlisle, Pennsylvania, where he won his first wife, Rachel Bird. He spent one year at Annapolis while getting a legal foothold, but finally located in Philadelphia in 1778, which remained his home for the rest of his life.

Wilson had not been in America a dozen years when he was elected to the Continental Congress in 1775 to succeed Thomas Willing, a business partner of Robert Morris, who had refused to sign the Declaration of Independence. While there was at first some delay in Wilson's signing the Declaration of Independence, he was loyally for it. No man of his day more clearly interpreted the fundamental issue involved or was more familiar with the philosophy of Locke, his acquaintance of university days, upon which the principles of the Declaration of Independence were founded. In one of his addresses he said, "That the Colonies may continue connected as they have been with Great Britain, is our second wish; our first wish is that America may be free." Wilson was defeated for re-election partially because of this advocacy of the Declaration of Independence. The

Mecklenburg (N. C.) Declarations of May 31, 1775, were based on the popular writings of James Wilson.

After his first service in the Continental Congress, James Wilson continued his career as a lawyer. He first came into legal fame when he represented the Landlords of Pennsylvania in their fight with the Proprietaries of Pennsylvania, and won a great victory for popular government. He was the principal attorney for Robert Morris and aided him in his many great business undertakings. It was he who did the legal work when the Bank of North America was organized, in the course of which he proposed a plan for a bank similar to the one Hamilton established later. He also served as advocate-general for the French Government during the time of its active alliance with America during the Revolutionary War, and was one of the leading figures in the completion of that alliance, signed on February 6, 1778, which brought France to the aid of America. The French-American treaty provided that no peace treaty between England and America should be completed without the approval of France, a provision which Jay and Adams were prompt to ignore when they and Franklin completed the peace treaty with England five years later. The fee received by Wilson for this service to France was pitiful pay for the great service rendered, for he was in effect the unofficial Ambassador of France.

He also represented Pennsylvania when it and Connecticut were in legal warfare over claims to a portion of Pennsylvania then known as the Wyoming Territory, occupied by citizens of Connecticut. It was before we had a national judicial system, and the controversy was argued before a committee of the Continental Congress, then the only method of adjusting such disputes. He also served on the Court of Appeals, a court established by the Continental Congress for the trial of a limited class of cases, and was therefore a national court antedating the Supreme Court of today. Wilson's ability and patriotism were recognized by his being returned to the Continental Congress for another period of service in 1782 and 1783, and again in 1785, in which he was chairman of what might properly be called our first Committee on Judiciary.

Wilson was at his best as a member of the Constitutional Convention, where he ranked next to Gouverneur Morris in the number of

speeches made, and was the great ally of Madison in his fight for a consolidated government. He was a liberal member of the Convention and fought hard, not only for the popular election of Senators, but even for the popular choice of President. Though a Philadelphia lawyer whose clients were among the plutocracy of his day, he was a genuine liberal in his political concepts, and a champion of the people. He was the first of all Americans boldly to declare that America under the new Constitution was intended to be a consolidated nation, one and indivisible, and not a mere confederation of independent states as was argued by most of the early interpreters of the Constitution. For Wilson, each American citizen held a dual citizenship, one in the state of his residence, the other in the National Government. The learned expositions of the Constitution by Marshall and Daniel Webster in a later day were based largely on the conceptions of government advanced by him fifty years before.

He was the author of the provision in the Constitution which guaranteed a republican form of government to the states, and was one of the leaders who reluctantly yielded to the compromise which allowed equal representation to all the states in the Senate, for he felt that representation of all the states in both houses of Congress should be based on population. No finer analysis of the plans for a Constitution before the Convention was given than his elaboration. He was an active member of the Committee on detail to which was submitted the several plans offered for a Constitution, and which Committee submitted the framework around which the Constitution was finally framed. He was the author of the present Electoral System for choosing a President, which was a compromise taken when an agreement could not be reached on the several other plans proposed.

James Wilson was the only one of the eight signers of the Constitution from Pennsylvania who was also a member of the Pennsylvania ratification convention, which was the first state convention called after the adjournment of the Constitutional Convention.

He was the great oratorical force in the fight for ratification in Pennsylvania. In the campaign for delegates to Pennsylvania's ratification convention, Wilson urged the people to vote, though but

a small percentage, estimated at 20%, heeded his admonition. In one address during that campaign he said: "In battle, every soldier should consider the public safety as depending on his single aim; at an election, every citizen should consider the public happiness as depending on his vote."

Possibly the greatest work of his career was his successful defense of the proposed new Constitution on the floor of Pennsylvania's ratification convention. His addresses were masterly expositions of the Constitution, and rank with Hamilton's and Madison's papers in profundity of thought and clearness of analysis. The work done by him there was a counterpart of the fight made by Hamilton in the New York convention. Both he and Hamilton were masters of their situations, and by sheer logic, power of intellect and brilliancy of debate overcame one by one the obstacles which rose before them. Again, like Hamilton in New York, Wilson was one of the small number who were not cabined and confined by a narrow colonial viewpoint. He was not a native American, his education and later contacts had acquainted him with the best political thinking of Europe and America, and he was in a position to see widely as well as to think deeply. One of the great prophetic periods in an address made by him in his masterful fight for ratification was:

"Permit me to offer one consideration more, that ought to induce our acceptance of this system. I feel myself lost in the contemplation of its magnitude. By adopting this system, we shall probably lay a foundation for erecting temples of liberty in every part of the earth. It has been thought by many, that on the success of the struggle America has made for freedom will depend the exertions of the brave and enlightened of other nations. The advantages resulting from this system will not be confined to the United States, but will draw from Europe many worthy characters, who pant for the enjoyment of freedom. It will induce princes, in order to preserve their subjects, to restore to them a portion of that liberty which they have for many ages been deprived of. It will be subservient to the great designs of Providence with regard to this globe, the multiplication of mankind, their improvement in knowledge, and their advancement in happiness."

When Philadelphia celebrated the final ratification of the Consti-

tution on July 4, 1788, Wilson was the orator of the day, and again thrilled all who heard him.

It was therefore logical for George Washington to select him for a place on our first Supreme Court of six members, and Wilson's only disappointment was that Washington did not select him as Chief Justice, for he was recognized as one of the first of the nation's lawyers and had done more than his part in the making of the Constitution and the work of establishing the new government. It was he who, as a member of the Supreme Court, wrote the decision in the famous case of *Chisholm vs. Georgia*, the effect of which resulted in the Eleventh Amendment to the Constitution. Wilson also sustained the inviolability of contracts in his decisions on the bench, a doctrine he had championed on the floor of the Convention which wrote the Constitution.

Washington sent his favorite nephew, Bushrod Washington, to Philadelphia to study law under this great Scotch advocate, and when he left the Supreme Court, it was Bushrod Washington, his former pupil, who was appointed by President John Adams, at the age of thirty-six, to succeed him. Bushrod Washington, who held the post for thirty-two years, was one of the two members of the Washington family after George Washington who ever held a high place in the National Government.<sup>2</sup> He was not an attractive person physically, being low in stature, one-eyed, and unpretentious in appearance as he sat upon the bench, his face smeared with the snuff of which he was a generous user. He fell heir to Mount Vernon in the will of his renowned uncle, George Washington, who died about a year after the nephew won his high judicial honors. Bushrod Washington was succeeded on the bench by Henry Baldwin, of Philadelphia, who like him was also educated by an uncle, Abraham Baldwin, one of the signers of the Constitution for the State of Georgia and for years a member of the House and Senate.

When the seat of Government was moved from New York to Philadelphia in 1790, Justice Wilson resumed his work as a teacher in the University of Pennsylvania. When he began his law lectures there on December 15, 1790, Washington and his cabinet, consisting

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<sup>2</sup> The other was George Corbin Washington, a grandnephew of George Washington, who went to Congress from Maryland in 1827.



of Jefferson, Secretary of State; Hamilton, Secretary of the Treasury, and Knox, Secretary of War, went to hear this learned Bellario's opening address. He delivered twenty-four law lectures a year and was the great drawing-card of the school, then one of the few law schools in America.

He also served in the Convention of 1790 which wrote a new constitution for the State of Pennsylvania, which constitution provided for a Governor instead of a President, and a legislature of two houses instead of one as before.

Contrary to his Scotch tradition, James Wilson was not a financial success, though he was the author of America's first financial system adopted in 1780. However, he did have the traditional Scotch mania for money, a weakness which only proved his undoing and hastened the end of his life. Like Washington, Robert Morris, and others of his time, he was smitten with the land fever. He invested heavily in Western lands located on the Wabash in the present states of Indiana and Illinois, and fell prey to the pecuniary pirates who put over the land deals in the State of Georgia which produced the notorious "Yazoo Scandals," more fully discussed elsewhere in this volume. He borrowed one hundred and twenty-five thousand dollars to sink in that vulturous venture, which ended in disaster for all concerned and scorched even the judicial robes he wore. Wilson's defenders gave as an excuse for his land mania his interest in colonizing America, and not a mere desire for personal gain. When the house of cards erected by Robert Morris, his client and close personal friend, fell, the financial security of James Wilson also came to an end.

It was he who introduced the Scottish game of golf in America, which he particularly enjoyed. No connection has been discovered, however, between his predilection for that pastime and his later financial reverses.

Wilson was a striking personality. He was six feet tall, erect and stately, and had the grand manner of men of great and glorious achievements. He was near-sighted and looked, as he stood lost in the solitude of his own cogitations, according to some biographers, as though he were peeping through a telescope. He was a man of books who did not know human nature as well as he knew logic and ora-

tory; it is said that his law pupils were allowed pretty well to work out their own destinies. One of his oft-quoted phrases was, "Causes, and not parties to causes, are weighed by Justice in her equal scales: on the former solely her attention is fixed; to the latter she is as she is painted, blind." His mind was described as a blaze of light, and Hopkinson, a fellow signer of the Declaration of Independence, called him a combination of Cicero and Demosthenes. One of Wilson's favorite Latin phrases was, "*Melius est petere fontes quam sectari rivulos*"—"It is better to seek the fountains than to follow the rivulets," and that was the secret of his power as a great debater. Though he appeared stern, in private life he was friendly, amicable, and benevolent.

He was twice married. After the death of the wife of his youth, he was married to Miss Hannah Gray, of Boston. He had six children. His one son, Bird Wilson, after a distinguished judicial career of sixteen years in Philadelphia, studied for the ministry of the Episcopal Church, which he entered at forty-two years of age, and won great distinction as a minister and theologian. He was for twenty-nine years a member of the faculty of the General Theological Seminary in New York, and was one of the few biographers of his unfortunate father.

Wilson's home in Philadelphia was located at Third and Walnut Streets. It was called "Fort Wilson" because of an attack made upon it by an angry mob during the days of the Revolution, when a group of excited citizens sought to do violence to Wilson for his defense in court of certain Tory citizens of Philadelphia who had refused to obey the price-fixing edicts of the time. Three other signers of the Constitution, Mifflin, Clymer, and Robert Morris, were in the house when the mob attacked and was repulsed by local militia. One person was killed in the *mêlée*, and Mifflin was slightly injured.

His last days were days of sorrow and tragedy, in which he was all but brought to bay by the hounds of his creditors who howled constantly around him. One of the parties who harassed him during this period of his life was Pierce Butler, of South Carolina, a man of wealth who had served with him in the Constitutional Convention. When a jail sentence loomed before him as a

result of his inability to satisfy a judgment obtained against him, Wilson exchanged judicial circuits with James Iredell, a young member of the Supreme Court from North Carolina, and hurried away to hide himself from his pursuers in the rural fastness of the Southern Circuit. The Supreme Court at that time and for many decades thereafter provided for two sessions of the Court which met annually in the three judicial divisions, the Eastern, Middle and Southern Division into which the country was divided, two Supreme Court judges being assigned to sit with the District Court judges at such sessions. He was engaged on such a mission when he made his last judicial and earthly journey.

It was at Edenton in eastern North Carolina that the end came on August 28, 1798, at the home of former Governor Samuel Johnston, of North Carolina, the former president of the North Carolina ratification convention, one of North Carolina's first two United States Senators, and a brother-in-law of James Iredell, and on Johnston's estate Wilson was buried. His health had not been good for some time, and when the winds of adversity increased in volume about him, he soon succumbed to them.

Wilson's bones were exhumed on November 22, 1906, and taken back on an American battleship to his beloved Philadelphia, with the flags of the original thirteen states wrapped about his casket. He was re-interred near the entrance to the old Christ Church whose rector had welcomed him when he first came to America one hundred and forty-one years before. Nearby are the graves of six of his fellow signers of the Declaration of Independence, Benjamin Rush, George Ross, Joseph Hewes, Francis Hopkinson, Benjamin Franklin and Robert Morris, the last two of whom also signed the Constitution with him. Theodore Roosevelt, then President, with several members of his cabinet and members of the Supreme Courts of the State of Pennsylvania and of the United States, led by Chief Justice Fuller of the United States Supreme Court, were present and spoke. Representatives of many patriotic and learned societies of Philadelphia and Pennsylvania, including the Society of St. Andrews in Philadelphia, of which Wilson was President for ten years, and whose Rector came to America to pay honor to a Great Alumnus, also attended the impressive ceremonies. Andrew Carnegie, a Scotchman

who had fared better financially in America than James Wilson, was one of the notables in private life who was also present.

After an absence of one hundred and eight years from his adopted city, his bones were again near the scene of his great labors. The following quotation from his own philosophy of government is on the simple slab which marks his final resting-place: "That the supreme power should be vested in the people, is in my judgment the great panacea of human politics."

### ROBERT MORRIS

Robert Morris, of the Pennsylvania delegation to the Constitutional Convention, was classed as the banker and capitalist among the makers of the Constitution. Just as Franklin was the diplomat of the Revolution, Dickinson its pen, and Washington its sword, so was he its financier. At the time of the making of the Constitution his financial success was on the decline, and before his death about twenty years later he had known poverty, which, coming as it did after great wealth, brought him and his family much woe.

Robert Morris was a native of Liverpool, England, where he was born January 20, 1734, and where he spent the first twelve years of his life. His father, a broker there, was transferred to America and located at Oxford, a small town in Maryland on the east shore of Chesapeake Bay. He was accidentally killed on July 12, 1750, by the explosion of a gun fired in his honor aboard a ship which transported merchandise for his English firm. He was buried at White Marsh, Talbott County, Maryland.

The schooling of Robert Morris was very limited. Except for the few years spent in school in Liverpool, his principal education was in the school of experience.

After spending one year in Maryland, he went to Philadelphia and secured a position in the great banking house of Charles Willing and Sons. Seven years were spent there, until in 1754 he was made a member of the firm, which was thereafter known as Willing and Morris until its dissolution thirty-nine years later in 1793. Willing and Morris was the "House of Morgan" of its day. While it did not float securities or finance nations in war and peace, it was then the great banking and business house of the country, just

as Philadelphia was the New York City of our early history. His firm was a great importer as well as exporter, its ships literally sailed the seven seas, Morris himself belonged to the buoyant optimistic type of promoter and business man, and there was no limit to his dreams of wealth and power.

By a happy marriage to Miss Mary White, a member of a fine New Jersey family, he at thirty-five years of age became connected with the social elite of his day. William White, a brother of Mrs. Morris, was the first Episcopal bishop of Pennsylvania, and the family was in the forefront of the financial, social and religious life of Philadelphia and the colonies.

The political clouds which arose as a result of the unacceptable Stamp Act quickly aroused the anti-English spirit of Robert Morris, himself a native Englishman. The burden of the Stamp Act naturally fell most heavily upon him as a man of business. He opposed it vigorously, and almost at once coöperated with the non-importation societies organized throughout the colonies to discourage trade with England. He was called upon to serve as chairman of the Committee of Safety, a patriotic body organized early in the struggle for independence. After the war broke out and the fight for independence was on, he was chosen as a member of the Continental Congress, where he served from 1776 to 1778, three of the most vital years in the history of the Congress, and as such it was his distinction first to affix his signature to the Declaration of Independence and then to the Articles of Confederation.<sup>3</sup> He was reluctant to sign the first, and felt with Dickinson and others that the step was ill-advised at the time. But unlike Dickinson he did finally sign it, and all the weight of his wealth was thereafter thrown in the scales on the side of the revolting colonies. As he expressed it, he offered them everything except his integrity. When the alarmed Congress of 1776 for safety's sake moved down to Baltimore, Robert Morris remained in Philadelphia and looked after its remaining affairs.

The part played by him in helping finance the War of the Revolution cannot be overestimated. Without his aid Washing-

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<sup>3</sup> He was also in the Pennsylvania Assembly from 1778 to 1780 and again from 1785 to 1787.

ton would have been helpless to feed and clothe the struggling soldiers who pushed forward to final victory. The House of Willing and Morris furnished supplies and Morris personally financed more than one important military move. His own credit was at the disposal of Washington. The battles of Trenton and Princeton were largely financed by him. The march to Yorktown in the autumn of 1781 would have been impossible without his aid, and he personally advanced \$1,400,000 to supply guns and ammunition for that campaign alone. He also had an important hand in financing supplies smuggled from Havana up the Mississippi River for Clarke's conquest in the name of Virginia of what later became the Northwest Territory, assistance which in all probability was of decisive value in establishing the great Middle West as a part of the United States rather than of Canada.

The exact details of most of these financial operations, which were indispensable for the conduct of the war, will probably never be known, for many of them were of necessity conducted on the personal credit of private citizens whose records have not been preserved. Washington's letters from the period of his military campaigns are full of urgent appeals to Morris for any amounts of money for the army. The shifts to raise funds to which he and others were driven can only be guessed, and in 1783 Morris admitted in a letter to Franklin: "Nothing should induce me in my private character to make such applications for money as I am obliged in my public character."<sup>4</sup>

Perhaps from necessity, therefore, Morris' own reports to the Continental Congress were not always explicit or complete. This was later pounced upon after his financial house had collapsed to establish that he had, by a system of graft and charging of excessive prices for supplies furnished, profited not only handsomely but shamelessly at the expense of the Union. But while he had no doubt lost nothing by his operations as a whole, the best tribute to his integrity was the lasting confidence of Washington, who probably knew as well as any one the full extent of and the urgent necessity

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<sup>4</sup> Morris received much help in aiding the colonies from Haym Salomon, a Polish Jew, who personally advanced more than \$650,000. He was never repaid and died bankrupt.

for those operations, who was an excellent judge of men, and who remained his close personal friend to his death, even though Morris was in prison for debt at the time. He was for years Washington's private banker. Washington occupied a Morris house when the seat of the Federal Government was at Philadelphia at the time of his spectacular failure, and Mrs. Morris was an intimate friend and companion of the gentle Martha Washington.

The management of the finances of the colonies was in the hands of committees appointed by the Continental Congress until the final ratification of the Articles of Confederation, when Robert Morris was chosen as superintendent of finance. He served in that position from May 14, 1781, to November 1, 1784, when, disgusted with the feeble support given to the new national government, he resigned. He had as his assistant Gouverneur Morris, whose financial and business ability appealed to him strongly, and whom he later invited to become an associate in his own wide private interests. It was Robert Morris who organized the Bank of North America, the first incorporated bank in American history.

By 1787 his affairs were beginning to become involved. It is probable that he had lively hopes that a new national government more firmly established than the existing order would serve to bolster his wavering fortunes, and he was an active participant in advocating the steps which led up to the Philadelphia Convention. But like many men of finance, he worked better alone than before the eye of a large group, and in the Convention itself he was a silent member. He was present and voted with his state delegation, the largest there, but made no extended addresses and served on no important committees.

After the Constitution was ratified, Washington thought well enough of the financial astuteness of Robert Morris to tender him the post of Secretary of the Treasury in his first cabinet. He was quick to decline it, but suggested to Washington the nomination of Hamilton, who accepted it.

The Pennsylvania assembly chose Robert Morris as one of that state's first two United States Senators. William McClay, of Harrisburg, was his colleague, and he and Morris represented the two shades of political thought of the time as they represented the two sections of Pennsylvania. But in the Senate he was again not a

figure of consequence. His best known service was in getting Congress to return to Philadelphia after one year in New York, where it remained for ten years awaiting the completion of the government buildings in the new city of Washington.

The family of Robert Morris consisted of five boys and two girls. He sent his oldest sons to school in Switzerland. One of them, Thomas Morris, became a member of Congress from New York,<sup>5</sup> another represented his father abroad. One daughter became the wife of James Marshall, of Virginia, a brother of John Marshall of judicial fame. James Marshall sold tobacco for his father-in-law in Europe.

Morris fared badly in his effort to make money out of real estate in the new capital on the Potomac. His firm purchased 6,000 lots at \$70 each and expected to reap a rich harvest, but the tides of fate had already begun to run against him and, like his ventures in western lands, his hopes for wealth in Washington vanished into thin air.

The last effort made by him in his desire for splendor was in attempting to build a great mansion in Philadelphia. Plans for a regal home were drawn and he had visions of the palace of his dreams. But before these could be realized his financial bubble burst and his fictitious fortune vanished, almost over night. More than sixty thousand dollars had been spent on the foundations of the unfinished palace alone, and before many months peddlers were hawking on the streets of Philadelphia bits of statuary and furniture which had been intended for the mansion.

The fall of the house of Morris, like the fall of the temple which crushed Samson of old, not only destroyed Morris financially, but also wrecked many of his business associates. He was the leading business man of Philadelphia and possibly the most prominent one in all the colonies. His firm bought and sold more tobacco and flour than any American firm. The banking firm of Willing and Morris was the private banking house of a great number of the leading men of the day. But he was in the grip of the then universal mania to own land in great abundance. His holdings, which ran into mil-

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<sup>5</sup> Two of the sons of Thomas Morris went to Congress. One, Isaac Newton Morris, went from Illinois; the other, Jonathan David Morris, went from Ohio.



lions of acres, extended from New York to Georgia. He was a plunger and a speculator who had taken long chances for success.

The great crash came to Robert Morris toward the close of Washington's second term as President. He was pressed hard by his creditors on every side. Hamilton, whom he had been instrumental in making Secretary of the Treasury, was so forgetful of his old friend as to act as attorney for one client, Church, by name, who dealt harshly with Morris. The Bank of Pennsylvania, which he had helped to organize, sued him as his misfortunes multiplied. One distraught French creditor threatened to kill him when he failed to recover his long unpaid debt. At the last, the once "king of American finance" asked his gardner to drive from his premises the bill collectors who gathered there like vultures ready to seize upon their prey.

Like the proverbial straw which broke the camel's back, it was a judgment for only a \$16,000 debt out of all his millions of liabilities which brought him to final ruin. The judgment was issued on December 30, 1797. Six weeks later, on February 16, 1798, Robert Morris entered the Purin Street, Philadelphia, jail for debt.<sup>6</sup>

His life in the prison was not as hard as that of some others condemned to the then common fate of debtors. Some of his old friends saw that he was supplied with at least a few comforts, and many came to see him. But for him the prison remained the "hotel with the grated doors." He walked fifty times each day around its corridors for exercise, dropping a pebble each time to indicate a completed circuit. Stern man of the world that he was, he even amused himself at times by writing poetry. It was no wonder his friends thought him insane.

Among those who visited him was his former partner and assistant commissioner of finance, Gouverneur Morris, who called to see him soon after his return from a long absence in Europe. It was Gouverneur Morris, then a United States Senator from New York, who arranged for his final release from prison, as well as for the home and income of \$1,500 per year for life for Mrs. Mor-

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<sup>6</sup>It stood on the ground now occupied by the Penn Mutual Life Insurance Company, not far away from the very building where Morris signed the Declaration of Independence, the Articles of Confederation, and the Constitution of the United States.

ris, an inestimable boon to the stricken capitalist. No doubt the most heart-breaking experience of Robert Morris' entire incarceration was the visit of General Washington, who came to discuss with President Adams his appointment as Commander-in-Chief of the American Army for an impending war with France. Only the slender bars of the jail divided the two friends of other days, but a world separated them in their individual peace of mind. The one was bankrupt, broken in purse, in heart and in health, a shattered hero; the other enshrined already among the immortals, and living his last days on his peaceful estate overlooking the Potomac River. Washington sat down to dinner in the Purin jail with his old friend, but could do little otherwise to relieve him directly, for his obligations were beyond even Washington's substantial means. But he did aid Morris' family, and he cordially invited Mrs. Morris and her daughters to come to Mount Vernon and remain there indefinitely if they so desired.

Sorrows of every kind came in the wake of his financial debacle. One son, William, a young man of twenty-seven years of age, died while his father was a prisoner.

But his losses were not limited to his own family or fortune, which has been variously estimated as at one time amounting to from twelve to thirty millions of dollars. He admitted to an obligation of \$100,000 to the United States Government, which of course was never repaid. His brother-in-law, the Episcopal Bishop White, of Pennsylvania, lost \$3,000 in his failure; James Marshall, a brother of the great Virginia jurist, who married Esther Morris, lost £20,000; "Light Horse Harry" Lee (General Henry Lee), the father of Robert E. Lee, lost \$40,000, which no doubt contributed to his own future financial collapse and the threat of a debtors' prison. Gouverneur Morris, his former partner, lost \$24,000, and Thomas Fitzsimmons, of Philadelphia, who served with him in the Constitutional Convention and later in Congress, lost \$150,000, a great fortune for that day. The tragic end to the great career of James Wilson of the United States Supreme Court was no doubt largely due to Robert Morris, who had encouraged him in his wild speculations in western land.

He remained a prisoner until his release on August 26, 1801, when he was one of the first great beneficiaries of the Bankruptcy Act,

enacted early in the first administration of President Thomas Jefferson. It was the irony of fate that Hamilton, whom he had befriended and helped on his way to fame, should have been among his persecutors, and that Jefferson, whose policies he opposed, should sign the bill which opened his prison door and set him free.

The few years left to Morris after his release from prison were years of pain and poverty, until death gave him the peace of the grave on May 8, 1806.

Nevertheless Philadelphia thought enough of his memory to erect a fine figure of him in front of its Exchange Building, and when he died the word "Financier" was included in the inscription on his tomb. Lafayette visited his widow while in America in 1824-1825, and showed her every courtesy. A descendant, Henry W. Morris, was a Union naval officer during the Civil War and was put in command of New Orleans after its capture by Union forces, and many of his descendants live today in and about Philadelphia.

### *GOUVERNEUR MORRIS*

One of the most colorful personalities of the Constitutional Convention, as well as the most loquacious, was Gouverneur Morris, of the Pennsylvania delegation. Despite his physical handicaps, which included a crippled arm and a leg amputated below the knee, he was personally attractive, with a rich mellow voice, a graceful demeanor, and the appearance and bearing of a man of distinction. It was he who drafted the first copy of the Constitution which was actually signed by those present at the end of the Convention. While the writing does not resemble that of his signature, he claimed that distinction for himself at the time and no one has as yet successfully refuted it.

He was a native New Yorker. It was there he was born on January 31, 1752, on the manorial estate known as "Morrisania," located on the Harlem River on what were then the outskirts of New York City, and it was there in the very room in which it began that his life came to an end after sixty-four eventful and brilliant years. Morris was a citizen of Pennsylvania for less than a dozen years,

and aside from his service as a delegate to the Convention, had no part in the public affairs of that state.

The Morris family, which came to America from the West Indies, was of English origin. Richard Morris, a captain in Cromwell's army, fled from England to the West Indies after the restoration of the Stuart line. There he married and thence migrated to New Amsterdam (now New York), where he established "Morrisania." For nearly a hundred years before the birth of Gouverneur Morris, the Morris name had been a noted one in the life of New York and New Jersey. His grandfather served as Royal Governor of New Jersey, and a New Jersey town and county now bear his name. His father was a noted New York lawyer who sat on the highest courts of that state. Gouverneur Morris was the youngest child of a second marriage.

He was educated at King's College (now Columbia University) in New York where he graduated with honors at sixteen years of age. As class orator he thrilled the commencement audience with his sophomoric subject of "Wit and Beauty." Later, when he won an advanced college degree, the subject of his graduation essay was "Love." We may assume that both themes were graciously dealt with by one of his sentimental nature. He studied law under William Smith, a famous lawyer of old New York, who became a Tory when the cry for independence of the colonies was raised.

The Revolutionary cause brought much anguish to the Morris family. His mother was an outspoken Tory and had no sympathy with the revolutionary movement, although one of her step-sons, Lewis Morris, a half brother of young Gouverneur Morris, served as a Continental Congressman and was one of those who signed the Declaration of Independence. A brother of Lewis Morris was a soldier in the English army where he won high distinction, and a sister was the wife of an English Duke.

Though not without a wrench from these ties in his own family and home, which was a center for Tory intrigue when the war came on, Gouverneur Morris himself championed the cause of the revolting colonies, and was elected at twenty-five years of age as a delegate to the convention which wrote the first constitution of New York state in 1777. That the constitution he there helped draft was

a liberal and progressive one was acknowledged when the leaders in the Philadelphia Convention drew freely from it in framing the constitution written there.

After helping write the New York constitution, Gouverneur Morris was chosen in 1777 to succeed his half brother, Lewis, as a member of the Continental Congress. At the same time he served as a member of the First Assembly of New York. Washington soon learned to lean heavily on this bold and brilliant young leader, who had paid so dear a price for his loyalty to the American cause. He served on the committee of the Congress which investigated camp conditions at Valley Forge not far from Philadelphia, and as a young Continental Congressman was a leader in devising our present monetary system, which he did in collaboration with Thomas Jefferson. He was also as a congressman one of the signers on behalf of the state of New York of the Articles of Confederation.

After serving for two years in the Congress, Gouverneur Morris located in Philadelphia, the seat of the Congress, to practice the profession of law. It was during this period of his life, when he was the gay and debonair bachelor of great promise and usefulness, that he had the accident which resulted in the amputation of one of his legs below the knee. The horses in his carriage became unmanageable and ran away, throwing him to the hard street. A broken ankle and other injuries caused his physicians to decide on an amputation which, no doubt, would not have been considered necessary today. Morris endured the agony of the operation, which was performed without the aid of modern surgery or anæsthetics, with good humor, and when visitors to his hospital bedside assured him such an accident must be a blessing in disguise, he immediately replied by suggesting that the amputation of his other leg might mean a double blessing to him. In addition to the loss of this leg, he had a withered arm as a result of a scald when a small child. Despite these physical handicaps, he was one of the most charming of men and to the end of his days a social favorite.

When Gouverneur Morris' good friend, Robert Morris, of Philadelphia, accepted the task of directing the nation's finances after the Articles of Confederation were ratified on March 1, 1781, and the new government became an actuality, he invited him to serve

as his assistant. He joined Robert Morris in the latter's great private business and banking ventures upon the conclusion of his services as our first Secretary of the Treasury, which office he resigned in disgust after more than three years of service. The finances of the young Confederation were rapidly reaching a chaotic state, and to banking and business men such as Robert and Gouverneur Morris the financial future of the new government was all but hopeless. Later these two associates in public and private affairs were to sit as fellow delegates in the Constitutional Convention.

Hamilton and Morris were fast friends and saw alike, in many ways, the great issues before the Constitutional Convention in 1787. Both were aristocrats in manner and thought and both advocated a strong consolidated government, though he was not the overbearing leader which Hamilton was. As Danton expressed it, "Audacity, more audacity, and always audacity" was a characteristic of both of them. Each was brilliant and bold by nature, and both enjoyed the confidence, admiration and intimate friendship of Washington, at least to the extent that such friendship was enjoyed by any one. Presuming on this one day during the session of the Convention, Morris made a wager with Hamilton that he could slap the great Washington on the back and familiarly address him as "General," the loser to buy the best quail and wine dinner to be had. When he attempted his bold venture he met with a cold rebuff, the arctic effects of which he described with relish to the end of his days. But he did get his dinner.

No member of the Convention was more active than Gouverneur Morris, who not only led all the members in the number of speeches made,<sup>7</sup> but at the close of the session was a valued member of the committee on style and revision, which committee, interestingly, was composed entirely of college men. Gouverneur Morris and Hamilton, from King's College, served with Johnson, of Yale; King, of Harvard, and Madison, of Princeton. As already related, Gouverneur Morris gave his own hand the credit for penning the final work of that important committee.

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<sup>7</sup> Gouverneur Morris spoke 173 times; James Wilson 168 times; James Madison 161 times; Roger Sherman 138 times; George Mason 136 times. They were the most talkative of all the delegates. Elbridge Gerry, with 119 speeches, was not far behind.

On the Convention floor he was at all times bold and many times brilliant in his debates, but was sometimes not beyond being criticized for over-boldness. One such act, which provoked an unfavorable reaction at the time but can only be commended in the light of subsequent events, was to have his aged colleague, the great Franklin, make the motion at the end of the session that the record show the Constitution was approved by the unanimous vote of the states. Many individual members had been reluctant to sign it, but yielded and did sign when they were outvoted in their state delegations, which under the organization of the Convention voted as a unit.

After the Convention ended Gouverneur Morris had no opportunity to take part in urging ratification. Before that issue could be settled he took passage to France to look after the business interests of himself and Robert Morris. Philadelphia was a great flour exporting center, and he, while abroad, got big orders in France as the Napoleonic Wars rose in their fury. His firm also dealt much in exporting Virginia tobacco and Gouverneur Morris, the former lawmaker and architect of the Constitution, was now the international merchant and salesman *par excellence*. He sold much western land to European speculators of both high and low degree, among his customers being the renowned Madame de Stael, who yielded to his convincing sales talk and bought land near Albany, New York.

Gouverneur Morris spent nearly ten years abroad on both private and public affairs. He was not in America during any of the period of Washington's two administrations as President, and did not return until a few months before his great friend of Revolutionary days had passed away. In 1791, while in Paris, Washington sent him on a special unofficial mission to England in an attempt to adjust issues which were finally concluded by the Jay Treaty of 1795. Finally, he was our first minister to France, where he served for two and one-half years.

Gouverneur Morris went to Europe, he said, "to rub off in the gay circles of foreign life a few of those many barbarisms that characterized a provincial education." But while his life there was a gay one, his personal inclinations made it also a useful one in many unofficial capacities. While in Paris he sat for Houdon, the sculptor,

as he designed the great figure of Washington, whom he greatly resembled in physical appearance, the original of which is in the rotunda of the State Capitol at Richmond, Virginia.

His personal sympathies at that time were with the aristocracy of France, rather than with the excesses of the *sans culottes*, and he did not fail to do all in his power, even to the loaning of his personal funds, to aid members of the royal family harassed by the wild-eyed revolutionists, some of which were never paid in full.

Among others he befriended Lafayette, not only helping to obtain his release from the prison at Olmutz, but loaning him ten thousand florins. Together with James Monroe, who followed him as minister to France in 1794, he saved the wife of Lafayette from death at the hands of the revolutionists.

Morris no doubt got a thrill out of his life in France at that epochal period of its history. When taunted as an aristocrat as he drove in state one day through the streets of Paris, he stuck his wooden leg outside his carriage door and shouted back at his tormentors, "An aristocrat—yes, one who lost his leg in the cause of American liberty." The leg had actually been lost not in the "cause of American liberty," but as a result of the license which was taken by his own carriage horses.

It was his experience on one day to dine with members of the oppressed upper classes of French society, and on the next to watch the same host and hostess as they were driven to their approaching deaths at the fall of the guillotine.

When America asked the recall of the daring Genet, the French ambassador to the United States, the recall of Gouverneur Morris was asked for in retaliation, and thus ended the foreign services of the merry Morris. Though no longer a diplomat in behalf of his native land, he remained abroad until the spring of 1799. Then he came to New York, his native city, to take up again his life there. It was a singular fact that both Genet and Morris after being recalled remained for a while in the countries which had asked for their recalls.

One of his first acts upon his return to America was to pay a visit to Philadelphia to see Robert Morris, who was in jail for debt, and later to arrange for his release when the Bankruptcy Act of



1800 became effective. He also helped in the readjustment of Robert Morris' affairs so as to provide a small income for the bankrupt's wife out of the vast fortune which, Insull-like, had vanished almost over night. Nevertheless his criticism of Robert Morris was severe: like the Israelites, he said, Robert Morris had attempted to build bricks with straw.

After being back in New York, his home state, for less than two years, Gouverneur Morris was chosen to represent that state in the United States Senate for an unexpired term of three years. He was sworn in as senator a few days before the Congress met for the last time in Philadelphia in November, 1800, and then moved into the unfinished new Capitol at Washington. He sat in the Senate chamber in Washington which later served as the meeting place of the United States Supreme Court from 1859, when the new senate wing was completed, until 1935, when the Supreme Court moved into its own marble Palace of Justice located near the Library of Congress.

As senator, he was in his own element. He was a scholar and an orator, and one of the few experienced American statesmen who knew the history and diplomatic practice of Europe as well as of America. However, he was a Senator during the rapid rise of Jefferson and his party and politically was in an uncongenial atmosphere.

Gouverneur Morris had written Washington only a few days before the latter's death urging him to run for President in the campaign of 1800. In that campaign Jefferson carried New York, as Gouverneur Morris feared he would do. He was jealous then, as he had been at Philadelphia, of the growing West, and when the Louisiana Purchase was completed, he argued that no American states could be carved out of that section, but that it should be treated as a province only. Later, when Jefferson made his great real estate deal with France, he was sympathetic to the plan of Pickering and others to have New York and the New England states secede from the Union and form an eastern Confederacy.

Upon leaving the Senate at the expiration of his one term, he devoted the next years of his life to the promotion of the Erie Canal, as Chairman of the Erie Canal Commission, which meant as much

to the development of New York in its day as did the development of the Panama Canal to the country as a whole generations later, and was its chairman at his death. He was also, like Dr. Hugh Williamson, of North Carolina, much interested in the New York Historical Society and was serving as its president at his death.

When the War of 1812 came on, Gouverneur Morris was in an embittered state and at first openly expressed a wish that England, whom he called "the Nourishing Nurse of Nations," would win the war. But he softened in his political beliefs as age came upon him and before the war was over he advised Pickering and his group of irreconcilables to forget party strife and think first of their country. Wisely, he warned them that it was of little moment whether the heads of the country be Federalists or Democrats when a crisis must be solved. A timely philosophy for his day as well as all days. The Federalist party was breathing its last breath as a national party when Gouverneur Morris died.

He was a popular orator on special occasions, and among other addresses delivered three notable funeral orations. When George Washington died less than a year after he had returned from Europe, he was the orator of the day at the memorial services held in New York. A few years later when his great Federalist friend, Alexander Hamilton, died in his arms after being shot in a duel by Aaron Burr, who as Vice-President had presided over the Senate when Gouverneur Morris was a United States Senator, he again delivered the funeral oration. Finally, he delivered the oration at the memorial services held in New York when George Clinton, the former anti-Federalist and ex-Governor of New York, died at Washington while serving as Vice-President under Madison.

He was the most of his life a bachelor, impulsive, gay, warm-hearted, both brilliant and bold, but finally surrendered and was married on Christmas Day, 1809, to Miss Anne Carey Randolph, thirty-five years of age, a native of Virginia and sister of Thomas Mann Randolph, the Governor and Congressman son-in-law of Thomas Jefferson. The bride had had a very unhappy life, having been involved some fifteen years before in a family scandal down in Cumberland County, Virginia, which resulted in the early death of Richard Randolph, a young and able brother of John Randolph, of

Roanoke, who was her brother-in-law. Patrick Henry, his attorney, secured Randolph's acquittal of a serious charge, but the young man died soon afterwards of a broken heart. Miss Randolph was serving as the housekeeper for Gouverneur Morris when she became his wife, and in one of her letters she states that she had only two dresses at the time of her marriage.

At his death, November 6, 1816, his wife and their one son, Gouverneur Morris, Jr., survived him. Gouverneur Morris, the novelist who was living in 1936, was a direct descendant of this remarkable man. The elder Morris was buried in a vault near St. Anne's Episcopal Church in the Bronx at New York, where many other distinguished members of the Morris family rest, a church designated as a historic shrine by the New York Legislature.

#### GEORGE CLYMER

George Clymer, one of the eight Pennsylvania delegates to the Constitutional Convention, was a native of Philadelphia, where he was born forty-eight years before the Convention met.

Orphaned at seven years of age, he became the ward of an uncle, a rich Quaker merchant, who left him his fortune at his death. He married into the Coleman family, prominent in business, and was primarily a business man all his life. His father-in-law was host to George Washington on Washington's early visits to Philadelphia at the beginning of the struggle for independence.

From the earliest talk of opposition to England's tax plans, Clymer, on whom as a large merchant the taxes fell most heavily, was a friend of the movement in protest thereof. He went to Boston when the fighting was hottest, and came home overflowing thereafter with a zeal for American independence, and was for a short time a captain early in the war.

He entered the Continental Congress as the successor of John Dickinson, called "the pen of the Revolution," but who had refused to sign the Declaration of Independence and had summarily quit the Congress. Clymer served in the Congress from July 20, 1776, to September of the following year. Like Wilson and the other Pennsylvania members of the Congress, he carried out the wishes of

his constituents and boldly signed the immortal Declaration of Independence.

While in Congress, he was the first treasurer of the central government and worked with Robert Morris in planning and managing the financial affairs of the united colonies, which were then and for some time continued to be in a chaotic state. It may be accurately stated that George Clymer was one of the first Americans to purchase liberty bonds. He not only bought bonds himself, but sold them to his well-to-do friends.

The problem Clymer and Morris, his fellow-Pennsylvanian, had to solve was a thankless and all but hopeless one. When the Congress beat a retreat from Philadelphia when threatened by unpaid soldiers, he and Morris remained as almost the sole ruling influence in the new and shaky government. There was no fixed budget, and if there had been, there was no fixed revenue with which to balance it. The national leaders issued for a time a currency known as "Continental currency" which, like German marks after the World War, became all but valueless. It was said that a thousand dollars worth of the Continental paper had a real value of only one dollar, which explains the origin of the term "not worth a Continental." Clymer also worked with Eldridge Gerry, another signer of the Declaration, in his efforts for financial reform, and served on the committee which was sent to the West to study the insurrection promoted by the British among the Indians.

After being out of the Congress for a few years, he again served as a Pennsylvania delegate from 1780 to 1783. When some of the southern states became delinquent in the requisitions fixed upon them to bear the cost of the Revolutionary War, Clymer was sent in company with John Rutledge to help arouse them to a sense of their national obligations.

For two years Clymer lived in Princeton, where he moved in order to give his children the benefit of the College of New Jersey, now Princeton University.

We next find him in the Pennsylvania Legislature from 1785 to 1788 where he, with other Quakers, fought against capital punishment for a long list of crimes, and also against the public exposure of criminals in chains. He was a member of the state legislature

when he attended the Federal Constitutional Convention, which met in the same building and in a room directly under the one occupied by the Assembly. In that Convention he was a silent member, and his name does not appear among the great leaders. However, he supported his delegation in its fight for the rights of the large states and was a thoughtful, even though silent, participant in the work of making the Constitution. Later, as a member of the Pennsylvania Assembly, he aided in having the Assembly call a state convention to act on ratification even before a formal request therefor had been made by the Continental Congress.

Clymer's constituents sent him to the first Congress under the Constitution he had helped to make. He was there for one term only, as the first representative of a district which included the territory later represented in Congress by James Buchanan, the fifteenth President of the United States.

Like Burke in England, he believed that a representative was sent to Congress to think for, and not with, his constituents, and as a congressman was one of our first insurgents. Hamilton had his aid in his fight for the assumption of state debts, a proposal which found little support in well-to-do Pennsylvania, which had no desire to help discharge the unpaid obligations of its thriftless neighbors.

It was Clymer's lot to go from Congress after one term to the disagreeable task of serving as head of the excise tax department during the time of the Whiskey Rebellion in western Pennsylvania, his own state, when the farmer-distillers of that region defied a Federal Statute fixing a tax of fifty cents a barrel on whiskey. The insurrection was subdued by an armed force of fifteen hundred soldiers, though the soldiers never reached the scene of the difficulty, for the announcement of their approach awed the rebels into peaceful submission.

Another hard task which befell this peaceful Quaker statesman was to go south and assist in negotiating a treaty with the Cherokee and Creek Indians of Georgia during the last days of Washington's administration.

His last years were those of a successful business man and public-spirited citizen who had earned his earthly reward. He was the first

president of the Philadelphia Bank, and as one of the patrons of the best in the cultural and social life of his city, was chosen president of the Academy of Fine Arts in Philadelphia.

In character George Clymer was modest, studious, and retiring, fond of books, and a cultured Quaker gentleman. No better sidelight on his modest way of life can be given than the following quotation: "He who justly estimates the value of punctual performance of a promise will not without very good reasons disregard it, whether it be to sign a contract, walk with a friend, pay a debt or present a toy to a child."

He died on January 23, 1813, at his country home called "Somerset," near Morrisville, Bucks County, Pennsylvania, during a second war with England. The body of this man of peace who found it necessary to participate in an age of warfare now rests in the Quaker cemetery at Trenton, New Jersey.

#### *THOMAS FITZSIMMONS*

Thomas Fitzsimmons was a man of commanding and stately carriage whose handsome and agreeable face and distinguished career won for him the popularity he enjoyed as "the business man in politics." For that was the title he successfully held and upheld.

On a bronze tablet erected in his memory near his final resting place in an old Catholic cemetery at Philadelphia it is stated that he was the author of the first tariff act enacted by the American Congress. The significance of such a tribute to one of the eight Pennsylvania signers of the Constitution lies in the fact that the failure of the states to approve such an act during the days of the Continental Congress was one of the ruling reasons for calling a Constitutional Convention. He was also one of the two Catholic signers of the Constitution, Daniel Carroll, of Maryland, being the other.

Fitzsimmons was a native of Wicklow, Tubber County, Ireland, where he was born in 1741. When, in the years preceding the American Revolution, the conflict between the ever-warring Catholic and Protestant factions in Ireland became too hot, young Fitzsimmons, then entering upon his twenty-first year, decided to leave it all behind and seek a new home in America, the then far-off land of religious liberty. It was before the term "United States" was adopted.

Upon landing at Philadelphia, his future home and final burial place, Fitzsimmons became active in business, and by marriage into the wealthy and socially prominent Meade family of that city rose rapidly in every way. It was the same Meade family which gave to America General George Meade, of the Union Army, during the unfortunate conflict of the sixties.

Fitzsimmons was a merchant and ship owner, two of the great sources of wealth in pre-Revolutionary Philadelphia, then the metropolis of America.

When the Revolution broke out, Philadelphia was a divided city. Many of the old families were loyal to Mother England, and many family ties were broken as the independence of the colonies became the issue of the day, just as the war of the sixties severed similar ties in many parts of the land.

Fitzsimmons' family connections were not Tories, and the business firm with which he was associated subscribed 5,000 pounds when funds were called for to supply the poverty-stricken colonies in their struggle against the first of world powers. He, not content merely to aid in supplying the sinews of war, went to war as conditions became more acute, and was a participant in the battles fought at Trenton and Princeton. He also served on the Pennsylvania Council of Safety.

After the war Fitzsimmons was chosen to serve in the Continental Congress of 1782 and 1783. He was there during the period when agitation first arose for a national tariff act as he fathered many years later, and also when the first proposals were made for revising the Articles of Confederation after they had been in effect for only one year.

He next served in the Pennsylvania Assembly, which met in Philadelphia in 1786-87. Like Clymer, one of his colleagues in the Constitutional Convention, Fitzsimmons was a member of the Pennsylvania Assembly when he was chosen as one of that state's delegates to the Constitutional Convention. The legislature met in the chamber over the room where the Constitutional Convention sat, and Clymer and Fitzsimmons had only to go up and down stairs to perform their double duties as law and constitution mak-

ers. Pennsylvania made no provision for paying its delegates to the Constitutional Convention, and all of its delegates were citizens of Philadelphia.

Fitzsimmons, like his banker friend Robert Morris, left the talking to his fellow-delegates, Gouverneur Morris and James Wilson, who led the field in vocal outbursts. He was in favor of the House of Representatives aiding in the making of treaties and was also for an export tax, both of which proposals were defeated.

No member of the Constitutional Convention rejoiced more over the final ratification of the Constitution than did Thomas Fitzsimmons. As a member of the Pennsylvania Assembly he aided in the hurried plans for calling a state ratification convention. Some critics of the Constitution, unhurried when the fight for ratification was on, later maintained that Pennsylvania would not have ratified the Constitution if the contest had been delayed a few months and there had been time to present the issue to the people, for only about twenty percent of the populace voted when delegates were chosen to the hastily called ratification convention.

When Philadelphia staged its great demonstration in honor of the final ratification of the Constitution by the required number of states, in conjunction with its national holiday on July Fourth, 1788, Fitzsimmons rode the old war horse which Rochambeau, the French general, had used in his American campaigns and held aloft a white silk flag upon which were emblazoned the ensigns of France and the United States.

When Pennsylvania chose its first two congressmen, the City of Philadelphia sent both Fitzsimmons and Clymer to New York as its representatives.

Fitzsimmons introduced the tariff act, which Madison, as the administration spokesman, succeeded in having enacted into law. He was one of the few Congressmen who voted against submitting the eleventh amendment to the Constitution to the states.

After serving for six years, he was defeated for re-election, turned aside from the Congress which then met near his own business house in Philadelphia, and devoted himself for the rest of his days to his wide interests. He served as a director of the University of Pennsylvania, as director and President of the Bank of North America,



and as President of the Insurance Company of North America, all three of which institutions were still in existence and active in the business and educational life of Philadelphia in 1936. He was actively engaged as president of the insurance company when he died on August 26, 1811. He rests in the cemetery of St. Mary's Catholic Church in Philadelphia.

### THOMAS MIFFLIN

Thomas Mifflin, of the Pennsylvania delegation, was one of the two signers of the Constitution who had served as President of the Continental Congress; Gorham, of Massachusetts, was the other one. He was also one of the three Quaker members of the Constitutional Convention; Clymer, of his own delegation, and Dickinson, of Delaware, were the other two.

Mifflin was a native not only of Pennsylvania but of Philadelphia, where he was born on January 10, 1744. He was educated at the University of Pennsylvania, where he graduated at twenty years of age. He belonged to a mercantile family, and after he left college was sent to Europe to prepare, in the counting houses of English merchants, for his business career.

As a Philadelphia business man with much to lose he was one of those who joined in signing the non-importation agreement, and was serving in the Pennsylvania Assembly when the first Continental Congress met in Philadelphia at Carpenters' Hall, near his home. He was a member of the Congress for two years.

Mifflin's gentle and pacific Quaker family was much disturbed when talk of war with the mother country arose, and he was at first selected as one of the speakers sent among the people to arouse them to their danger and to the performance of their duties. But this virile and athletic young man with the fine military carriage was not content with such service, and in 1775 entered the army with the rank of Colonel, which shortly became Brigadier-General; at the end of the war he was a Major-General and one of the ranking officers of the American army.

Although he achieved personal advancement and glory under Washington's command and in later years was one of his staunchest admirers, he was a party to the "Conway Cabal" during a period

when the military fortunes of the Continental Army were at a low ebb. Its object, to unseat General Washington from his sole command, was never achieved. Others who participated in the movement were the foreign-born Conway after whom the conspiracy was named, General Gates, and the "polished scoundrel" James Wilkinson, of Maryland, who went on Benedict Arnold's unsuccessful campaign against Quebec, after the war became the head of the American army while in the secret pay of Spain, and only retired in disgrace after the Spanish flag was hauled down at New Orleans and supplanted by that of France.

While serving his second term as continental congressman after the close of the war, Mifflin was chosen as President of the Congress. He was holding that position when Washington came down from New York on December 23, 1783, to Annapolis where the Congress was in session, and with great solemnity surrendered the commission as head of the American army which he had received more than eight years before. A quotation from his welcome address to Washington may be read today on the walls of the old capitol at Annapolis.<sup>8</sup>

After being president of the Continental Congress, a position which was held by only one other man from Pennsylvania, Arthur St. Clair, Mifflin was persuaded in 1785 to serve again in the Pennsylvania Assembly, and served as its Speaker for the three succeeding years. He was holding that position during the time he served in the Constitutional Convention, which no doubt accounted in part for his failure to take any very active part in its deliberations.

When Benjamin Franklin retired in 1788 as President of Pennsylvania, Mifflin, then at the height of his powers, rich, popular and able, was chosen as his successor. He was also chosen president of the Pennsylvania Constitutional Convention of 1790, which set up for the first time a form of government for Pennsylvania like that of the other states.

The constitution pursuant to which Pennsylvania conducted its affairs from 1776 to 1790 had been written under the inspiration of Benjamin Franklin. The issue at that time was between the rights of the old Proprietaries established in the days of William

<sup>8</sup> See Part I, Chapter III, on the Continental Congress.

Penn, which were championed by John Dickinson, and the rights of the people under the leadership of Franklin, and the forces of democracy had won. The legislature as then established consisted of only one house; the executive branch of the government was in a committee of twenty-five presided over by a President. The new government established in 1790 called for a Governor as chief executive, a popularly elected legislature of two houses, and an independent judiciary. Mifflin's efforts for the new constitution were ably furthered by the democratic James Wilson, who three years before had led in the making of the Federal Constitution.

It was a logical promotion for him to be made Pennsylvania's first Governor under its new form of government, an office which he occupied for the next nine years. The Congress of the United States met in Philadelphia during his entire occupancy of the Governor's chair, and Washington, then President, used his old soldier enemy and personal friend to aid him in putting down the famous Whiskey Rebellion in the western Pennsylvania county named after him. No guns were fired or battles fought in suppressing this, the first armed rebellion against the authority of the United States, although Governor Mifflin and Governor Henry Lee, of Virginia, both former Revolutionary soldiers, organized armies which began the march to the scenes of the disorders. The rebellion was directed against the first internal revenue law of Alexander Hamilton, the Federal Government's first Secretary of the Treasury, which sought to impose what would today be considered the very moderate levy of 50 cents a barrel on whiskey. Albert Gallatin, later a prominent figure in the life of the nation, served as adviser to the rebellious farmer-distillers. These feared the tax would cut off their only means of obtaining a satisfactory price for the corn they raised and turned into spirits which could be easily transported across the difficult mountain trails to the markets in the East.

Mifflin, who was regarded as one of the outstanding men of his day, and whose fine Philadelphia home was a show-place of the city, left the Governor's office much broken in health and in fortune. But, not content with the political honors he had held for thirty years, he allowed himself to be elected to the state House of Repre-

sentatives just before his death on January 19, 1800. He was buried in the Trinity Lutheran churchyard at Lancaster, Pa.

### *JARED INGERSOLL*

Among the many great lawyers who were members of the Constitutional Convention, few if any excelled Jared Ingersoll, of the Pennsylvania delegation.

He was a native of Connecticut, having been born at New Haven October 24, 1749. His father, Jared Ingersoll, Sr., was an eminent citizen of Connecticut and for several years was the representative of Connecticut in England at the same time Benjamin Franklin was there as the representative of Pennsylvania and other states. When the Stamp Act was about to be put in operation Jared Ingersoll, Sr., was placed in charge of the collection of the taxes for Connecticut and the other New England States. The sentiment against the tax became so strong that citizens of Wethersfield, Connecticut, one of the three Connecticut towns included in the organization known as the "Fundamental Orders" in 1639, organized a mob and exacted from the elder Ingersoll an oath before a notary that no more stamps would be sold, and in addition, made him repeat the words, "Liberty and Freedom." The sequel was that he was transferred to Philadelphia, where he was given an admiralty judgeship by the Royal Government.

His son, namesake, and only child, Jared Ingersoll, Jr., was sent to Yale, where he graduated in the class of 1766. After leaving Yale he was sent to London to study law at the Temple. After being abroad for five years young Ingersoll returned to Philadelphia and lived there the rest of his life.

When the question of separation from England arose, despite the fact that his parents and many of the first families of the city allied themselves with the Tory element in Philadelphia, young Ingersoll was a loyal supporter of the plans for an independent America and was active on its behalf.

He forged to the front rapidly as a young lawyer and lived to become one of the first in that profession, not only in Pennsylvania but in all America. His life was entirely devoted to legal affairs, the only non-judicial positions he ever occupied were those of delegate

to the Continental Congress for the year 1780-81, a time when all was dark and the permanency of the new government in doubt, and as a member of the Constitutional Convention in 1787. As one of the great legal minds of the Convention he was frequently called upon to advise it on difficult legal questions.

His first judicial office was that of Attorney General of the State of Pennsylvania, which he occupied from 1790 to 1799, during the period Thomas Mifflin was in the governor's chair. It was an important position, for the new Constitution of 1790 had just been adopted, changing the form of government in that state, and many difficult questions had to be referred to the Attorney General for solution.

Ingersoll could have held high position in the Federal Judiciary, refusing at one time a Federal judgeship, but he preferred to restrict his career to his own city and state in order to be near his own affairs. He served for a time as United States Attorney at Philadelphia. Among the great private cases in which he appeared as counsel was the impeachment trial of Senator William Blount, of Tennessee.

Though not a violent partisan, he was allied with the Federalist party, and was its candidate for Vice-President on the coalition ticket with DeWitt Clinton in 1812, which ticket was defeated by Madison and Gerry. He was then serving for the second time as Attorney General of Pennsylvania, which position he again occupied from 1811 to 1817.

The last public office filled by Ingersoll was a district judgeship in Philadelphia, which he held at the time of his death on October 31, 1822. He was buried in the churchyard of the First Presbyterian Church in Philadelphia.

Two of the sons of Jared Ingersoll, Charles Jared and Joseph Reed, went to Congress from Philadelphia, and his descendants continue to rank high in that city and state.

#### IV

### CONNECTICUT AND THE CONSTITUTION

**N**O state played a more important part in the evolutionary history of the American Constitution than did the State of Connecticut.

It was there that the germ idea of constitutional government was first born, when the three towns of Windsor, Hartford, and Wethersfield formed their famed Tri-Council in 1638. The Rev. Thomas Hooker, the founder of Hartford, one year later instituted the body of laws known as the Fundamental Orders, and Connecticut was also a vital part of the New England Confederacy.

Jonathan Trumbull, the last Royal Governor of Connecticut, was the only Royal Governor who turned his back on the King and followed his constituents in seeking their independence. Connecticut was also the home state of Silas Deane, special minister to France in the early years of the Revolution, the first American representative at a foreign court.

Connecticut and Rhode Island were the only states which sent delegates to the Continental Congress chosen by popular vote of the people instead of by their state legislatures.

From the beginning, the sentiment for a stronger national government than that under the Articles of Confederation was popular in Connecticut. The shipping interests were exasperated by the chaotic state of interstate commerce for lack of any central control; the conservative business interests saw their wealth being destroyed by the paper money craze which was sweeping all the states, and particularly in Rhode Island next door; the farmers, who cut lumber and firewood and ferried it across the Sound to New York, felt they would sell much more if it were not for the prohibitive tariffs imposed on its admission into that state.

The three delegates to the Constitutional Convention from Connecticut were all men of age, experience, great ability, and sincere devotion to the cause of their state and the nation. Dr. William

Samuel Johnson, the leader of the delegation, was noted as an educator as well as a learned lawyer, and was President-elect of Columbia College when he came to the Convention. Roger Sherman had signed both the Articles of Confederation and the Declaration of Independence; Oliver Ellsworth was later Chief Justice of the United States Supreme Court.

So great was the influence of the Connecticut delegation in the great compromise of the Convention over the equal representation of the states in the Senate, that it is known in history as the Connecticut Compromise. The influence of Connecticut on this occasion was also shown in the vote of Baldwin, of Georgia, a former Connecticut man, who voted in favor of the compromise, contrary to the vote of most of the other southern delegates. Both Ellsworth and Johnson served on major committees of the Convention, the former being on the Committee on detail and the latter a member and chairman of the Committee on style and revision, the first committee formulating the Constitution and the latter preparing it for signature at the end.

Nine days after the Convention at Philadelphia adjourned, two of the Connecticut delegates, Sherman and Ellsworth, sent the following letter to Samuel Huntingdon, Governor of Connecticut, in which they gave their interpretation of the Constitution, compared it with the government then existing under the Articles of Confederation, and set forth why they felt it should be adopted:

“New London, Sept. 26, 1787.

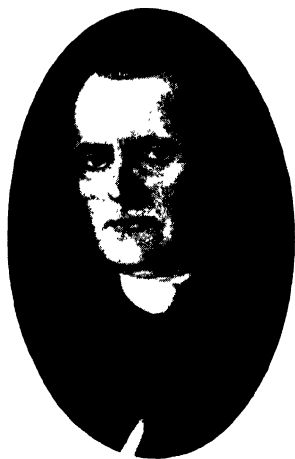
“Sir: We have the honor to transmit to your excellency a printed copy of the Constitution formed by the Federal Convention, to be laid before the legislature of the state.

“The general principles which governed the Convention in their deliberations on the subject are stated in their address to Congress.

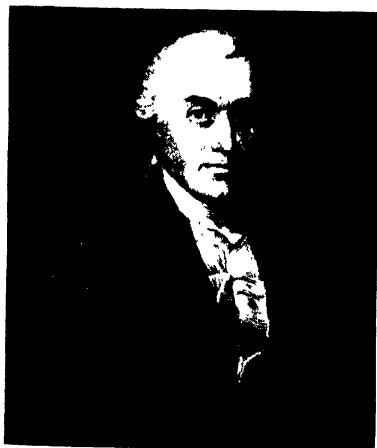
“We think it may be of use to make some further observations on particular parts of the Constitution.

“The Congress is differently organized; yet the whole number of members, and this state’s proportion of suffrage, remain the same as before.

“The equal representation of the states in the Senate, and the voice of that branch in the appointment to offices, will secure the rights of the lesser, as well as of the greater states.



*Roger Sherman*



*Oliver Ellsworth*



*Wm. L. Johnson*





"Some additional powers are vested in Congress, which was a principal object that the states had in view in appointing the Convention. Those powers extend only to matters respecting the common interests of the Union, and are especially defined, so that the particular states retain their sovereignty in all other matters.

"The objects for which Congress may apply moneys are the same mentioned in the eighth Article of the Confederation, viz., for the common defense and general welfare, and for payment of the debts incurred for those purposes. It is probable that the principal source of revenue will be duties on imports. What may be necessary will be requested of the states according to the number of their inhabitants; and although Congress may raise the money by their own authority, if necessary, yet that authority need not be exercised, if each state will furnish its quota.

"The restraint on the legislatures of the several states respecting emitting bills of credit, making anything but money a tender in payment of debts, or impairing the obligation of contrasts by *ex post facto* laws, was thought necessary as a security to commerce in which the interest of foreigners, as well as of the citizens of different states, may be affected.

"*The Convention endeavored to provide for the energy of government on the one hand and suitable checks on the other hand, to secure the rights of the particular states, and the liberties and properties of the citizens.*<sup>1</sup> We wish it may meet the approbation of the several states, and be a means of securing their rights, and lengthening out their tranquillity.

"With great respect, we are, sir, your excellency's obedient, humble servants,

"ROGER SHERMAN,  
"OLIVER ELLSWORTH."

"His Excellency, Governor Huntingdon."

The Connecticut ratification convention met at Hartford on January 9, 1788, and was presided over by Matthew Griswold, its first Governor and the former law teacher of Oliver Ellsworth. All three of the delegates who had gone to Philadelphia had been elected to go to Hartford, and under the eloquent and forceful leadership of Ellsworth, whose brilliant exposition of the new Constitution

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<sup>1</sup> The author's italics.

swept all opposition before it, the convention quickly voted for ratification. There had been some question, of course, whether Connecticut would ratify, and it actually took all of his eloquence to assure victory. But fundamentally the issue was not really in doubt, for Connecticut was one of the small states which were highly pleased with the arrangement which assured them equal representation in the Senate. At the same time the prospect of Federal regulation of interstate commerce promised to put an end to the then existing chaotic state of commerce, and the Constitution's provisions against state interference with contracts and requiring a single national currency assured an end to the paper-money craze. Though the convention's vote for ratification was not unanimous, it did not propose any amendments to the Constitution. The vote was 140 for ratification out of a total of 180 delegates present.

Johnson and Ellsworth were later elected to the first session of the United States Senate, and each had an important rôle in the making of the laws which established our national judicial system. Sherman was first a member of the House, but when Johnson left his Senate seat to devote himself to his college duties after Congress was moved from New York to Philadelphia, he was chosen as Johnson's successor in the Senate. This gave the Connecticut delegation at Philadelphia 100% representation in the new United States Senate, a distinction equalled only by the New Hampshire delegation of two members, Langdon and Gilman.

One of the delegates at Hartford, who opposed Ellsworth in obtaining Connecticut's ratification of the Constitution, was Jeremiah Wordsworth, a former Revolutionary leader of considerable fame who was to make a fortune a few years later. He became a member of the Federal Congress, and when it became certain that Hamilton's bill for the assumption of state debts would pass, sent a fast sailing-vessel south to buy up depreciated military certificates for which he received payment at par from the government.

#### WILLIAM SAMUEL JOHNSON

Dr. William Samuel Johnson, the leader of the Connecticut delegation to the Constitutional Convention, held a dual distinction as a great lawyer and a renowned educator. Like his colleagues, Sher-

man and Ellsworth, he had won renown as a lawyer and judge, when at Philadelphia. In addition he was President of Columbia College, to which office he was elected only four days before the Convention opened.

His father, Dr. Samuel Johnson, who was related to the famous Dr. Samuel Johnson, of England, was a clergyman of the Church of England, the first president of King's College (later Columbia College) and received the first honorary degree of Doctor of Divinity bestowed by Yale, where he was one of its first students. He was a leader in a plan for uniting the colonies more than a dozen years before the Declaration of Independence, and when Benjamin Franklin was seeking a suitable head for the University of Pennsylvania, was offered the post but declined.

William Samuel Johnson, the son, was the only signer of the Constitution educated at both Yale and Harvard. He received an A. B. degree at Yale at seventeen as a member of the class of 1744, an M. A. degree at Harvard, and later received the first honorary degree of Doctor of Laws bestowed by Yale. His popular title "Doctor" dates from a later honorary degree from Oxford. He and the much-honored Benjamin Franklin were the only two signers of the Constitution who were sufficiently learned to be generally known as "Doctor."

Dr. Johnson, like Oliver Ellsworth, lived and died in the same Connecticut town, the town of Stratford, where he was born October 7, 1727.

While he was closely and actively connected all of his life with the Episcopal Church, he was primarily a lawyer and prominent lay figure in public life. He was large, handsome, attractive and cultured, and his natural gifts and his profession led him early into public affairs. After serving for four years in the Colonial House of Representatives, he was sent in 1765 as a Connecticut delegate to the Stamp Act Congress, the first of the progressive steps which led to the American Revolution and, in its protest against the tax on paper, among the early American expressions of the peculiarly Anglo-American insistence on an absolutely free press as a basic element of democratic institutions. Others who later signed the Constitution and attended the Congress of 1765 were Dickinson

and Rutledge, though it may be noted also that some of those at the Congress were later not willing to go so far as to advocate complete independence, Johnson among them. Timothy Ruggles, the chairman of the Congress, later became an active Tory during the Revolution.

Thereafter Johnson was frequently called into public service. He and Ellsworth represented his state in its famous controversy in the courts with Pennsylvania, which was represented by James Wilson, over the boundaries and the title to the so-called Wyoming Territory, a narrow strip along the present northern boundary of Pennsylvania and the shores of Lake Erie. He was a member of the Governor's Council, a position in many ways similar to that of a state senator today, from 1771 to 1775. For two years, from 1772 to 1774, he was a member of the supreme court of Connecticut.

The most important service he rendered Connecticut before the Revolution was as its commissioner to England for five years, from 1766 to 1771, where the adjustment of title to Indian lands was one of his major duties. He and Dr. Benjamin Franklin were in England at the same time, and tried to put the American view-point involved in the Stamp Act controversy, and the American desire for a government by law and not by men before the English authorities, but unsuccessfully. While in England, Oxford conferred the degree of Doctor of Laws upon him and thereafter he was known as "Dr. Johnson."

The position taken by him during the Revolutionary War was a neutral one. He first tried to secure concessions from the English authorities and went to Boston on such a mission. He failed, and was charged by his fellow citizens with treason in his effort to avoid war. He thereafter retired to his country place near Stratford, which he had acquired as a part of his well-to-do wife's dowry, ended his public activities, and held aloof personally from the conflict and all official public assemblies until peace had been declared, though he did contribute of his means to the American cause.

Only a leader of exalted character could have survived in popular esteem in a state where the royal governor had joined the ranks of the American revolutionists. But, like John Dickinson, Dr. Johnson was still respected in his state, and after the Revolution, in the

most trying years of the Confederation, from 1784 to 1787, he was elected to a seat in the Continental Congress. Connecticut, like its neighbor Rhode Island, elected its Continental congressmen by popular vote, so the popularity of Dr. Johnson had clearly not been destroyed by his attitude towards the Revolution. He was one of the eighteen members of the Continental Congress who were also members of the Constitutional Convention; with him was James Madison, one of his fellow members on the committee on style and revision in the Convention.

He was one of the great leaders at the Philadelphia Constitutional Convention. He was then sixty years of age, and like Roger Sherman ripe in wisdom and experience compared to most of the others present, for the average age of all the delegates was about forty years, and the youngest present did not celebrate his twenty-seventh birthday until over a month after the Convention closed.

Dr. Johnson, as a citizen of Connecticut, whose older, conservative, and well-to-do citizens had become wealthy through trade, looked to the new Constitution for that assurance of economic stability which affairs under the old Articles of Confederation had lacked. Upright and uncompromising Puritan that he was, he detested talk of laws which avoided the payment of just debts; likewise the paper money heresy was one which he felt must be stamped out. At one time the Convention adopted a provision for the new Constitution, which he had proposed and sponsored, which would have made only gold and silver legal tender anywhere in the United States.

But his greatest contribution was as the acknowledged leader of the small state delegations. Most of these recognized the necessity for some form of central government which would be stronger than that of the Articles of Confederation, but none of them were willing to surrender their cherished local independence to what they feared would become the domination of the large states of Massachusetts, Pennsylvania, and Virginia. At the moment all of them suffered from the lack of proper central control of interstate commerce. But the small states had no intention, in order to obtain fairer commercial laws, of sacrificing the important positions they were able to maintain for themselves by reason of the fact that each

state had one vote in the Continental Congress without regard to its size. Connecticut, New York, New Jersey, Delaware, and Luther Martin, of Maryland, from the first stuck together whenever the issue of large states versus small states was raised, and for a time it seemed certain that the Convention would dissolve without any agreement being reached.

But the spirit of compromise finally prevailed, and out of the proposals made by Ellsworth and Sherman, of Connecticut, the colleagues of Johnson, came one of the most momentous proposals of all, which is still referred to as the "Connecticut Compromise" because of the important part played in its formulation by the Connecticut delegates.<sup>2</sup> A single-chambered legislature had originally been proposed by the New Jersey plan for a Constitution, but now two chambers were decided on, an upper house of Senators and a lower house of Representatives. The Senate was to be made up of older men to serve for comparatively long terms, an equal number to be selected by the legislature of each state, and to be virtually "ambassadors of the states," as Adams had called the delegates to the old Continental Congress. The lower house was to be made up of Representatives chosen by the people for shorter terms, and in proportion to the population of each state. The compromise was approved, for the smaller states saw themselves protected by the equal representation in the Senate, and the larger states saw themselves in control of the House, and one of the greatest barriers to a new constitution was thereby bridged.

Johnson's other great task in the Convention was as chairman of the committee on style and revision, which prepared the exact form and wording of the Constitution after its provisions had in general been worked out on the Convention floor. This was an all college-bred committee made up of Yale, Harvard, Columbia, and Princeton men: Rufus King, of Massachusetts, was from Harvard; James Madison, of Virginia, from Princeton; Gouverneur Morris, of Pennsylvania, and Alexander Hamilton, of New York, from Columbia (formerly King's College), and Dr. Johnson, from Yale and Harvard, who was now also president-elect of Columbia. Unfortunately,

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<sup>2</sup> Some historians have credited Johnson with the authorship of the full plan as ultimately evolved.

no minutes of this committee's extremely important work were kept so that we may only judge of the quality of its work by the finished product. The draft for a constitution which the committee prepared became in all major respects the Constitution we have today.

When the Federal Government was organized under the new Constitution, the Connecticut legislature selected Dr. Johnson as one of its first two United States Senators, and for two years he served in the twofold capacity of President of Columbia College and as a Senator from Connecticut. He was one of the twenty members in the first Senate, for Rhode Island and North Carolina had failed to ratify the Constitution in time, and New York had been unable to agree on its choice of senators because of factional divisions in its state legislature. Only eight Senators and twenty-three members of the House were present when the Congress first met in New York City on March 4, 1789, the House did not have a quorum until March 30th, and the Senate was not ready to organize until April 6th. As a member of the first Senate, Dr. Johnson had a vital part in the legislation which set up the new departments of government, especially the judicial department.

The early Senate was made up of exceptionally able men, but among such a group the urbane, forthright and learned Dr. Johnson, finished product of two colleges, with an honorary degree from a third and president of a fourth, was an engaging and attractive figure whose scholarly and statesman-like speeches carried conviction and were listened to with respect. Unfortunately, the Senate for its first five years met only in secret sessions without any of the blare of trumpets and beating of tom-toms which accompany present-day legislation, and we therefore have only an inadequate picture of the full extent of the services of its first members, including those of Dr. Johnson. The House of Representatives, whose sessions were public from the start, afforded a better opportunity for the more spectacular display of talents.

With him in the Senate was Oliver Ellsworth. Of these two brilliant minds President Dwight, of Yale, once said that if the latter was the Cicero of the first American Senate, the former was its Demosthenes. It was said that when Cicero spoke men admired his



beautiful periods; when Demosthenes spoke, men cried, "Let us fight Phillip!"

There was some criticism of Dr. Johnson's double duties as president of a New York college and as Senator from Connecticut. When the capital of the United States was removed from New York to Philadelphia, he resigned as Senator, and Roger Sherman, the third member of the Constitutional Convention from Connecticut, who had in the meantime been a member of the House, succeeded him. One of Dr. Johnson's oft-quoted remarks was, "He best serves his Maker who does the most good to his country and to mankind."

He continued as president of Columbia College until 1800, when he resigned and returned to his home in Stratford, Connecticut, located between Bridgeport and New Haven.<sup>3</sup> He was then seventy-three years of age and universally honored as a statesman, educator, and religious leader. The next nineteen years of his life, until his death on November 14, 1819, at ninety-two years of age, were largely devoted to his church, in which he was an outstanding lay leader. He was buried in the Episcopal cemetery at Stratford.

While a number of the signers of the Constitution lived for some years after Dr. Johnson's death, he died at a more advanced age than any of them. Dr. Franklin was the oldest at the time of the signing of the Constitution, while Madison, the last signer to pass away, was only eighty-five at his death in 1836.

#### ROGER SHERMAN

The Connecticut delegation was one of truly great men, and the sixty-six year old, rugged Roger Sherman was one of them. John Adams spoke of him as "that old Puritan, honest as an angel and as firm in the cause of Independence as Mount Atlas;" and Thomas Jefferson once said of him that he had never said a foolish thing in his life. He was a seasoned statesman among so many young men, most of whom Richard Henry Lee referred to as "young idealists."

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<sup>3</sup> One of Dr. Johnson's students at Columbia, who became famous, was John Randolph, of Roanoke.

Sherman's course at Philadelphia was a uniformly wise one and sustained the great name he bore.

Unlike his colleagues, Johnson and Ellsworth, who rivaled him in superb character and genuine worth, Roger Sherman was not a native of Connecticut. He was one of the few self-made men among the great men at Philadelphia, most of whom came from families of wealth and high social position.

His life began at Newton, near Boston, Massachusetts, where he was born on April 19, 1721. His years were full of hardships and unceasing toil, and his education was in the school of experience. His father's early death put upon him the care of his widowed mother, his brothers and sisters. Like Senator Henry Wilson, of Massachusetts, who died as Vice-President under Grant, he was trained to become a shoemaker. When twenty-two years of age he traveled to Connecticut on foot, carrying the kit in which were his shoemaker's tools. For a while he became a merchant with his brother at New Milford, Connecticut. During this time he mastered enough mathematics to become a surveyor, and a few years later was able to furnish the astronomical calculations for an almanac published in New York.

Comparatively late in life Sherman began to study law and became a lawyer at thirty-three. The failure of a local lawyer to give him the legal information he desired impelled him to study law. At thirty-four he was elected a judge of the local court of common pleas; six years later he moved to New Haven, where he held a superior court judgeship eighteen years, until his election to the first Congress under the Constitution.<sup>4</sup> For nine of these years he was also mayor of his adopted city as well as treasurer of Yale University at New Haven. (One of his fellow townsmen was Benedict Arnold, first a merchant, then a soldier, then a traitor to his country.) He was a familiar figure about New Haven, and Oliver Ellsworth in later years declared that Sherman had been the model of his youth.

No man of his time wrote the records of his patriotism more deeply in early American history than Roger Sherman. He was sent to the first Continental Congress and continued as a member as long

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<sup>4</sup> He was not content to hold one office at a time. While serving as a judge he was for nineteen years a State Senator.

as it existed, being alternately in and out every three years, since no one was allowed to serve continuously more than three years out of any six. He was the only American who signed the Declaration of Rights in 1774, the Declaration of Independence in 1776, the Articles of Confederation, and the Constitution; he also served on the committees which drafted the Declaration of Independence and the Articles of Confederation.

While in the Congress, Sherman served on a committee appointed to investigate the sale of shoes for the Continental soldiers. His practical knowledge of shoemaking gained in early life helped him quickly to expose the inferior quality of the shoes for the all but naked and hungry troops at Valley Forge.

He was one of a committee which met an English commission sent to America when Washington was at Valley Forge to propose some sort of compromise agreement with the American states. One plan called for the states to occupy the same status they had occupied at the beginning of the French and Indian War in 1754, in which war 25,000 Americans had aided England in keeping the French out of the Ohio Valley, and in which George Washington, the commander of the American forces in the Revolution, had taken part. But the spirit of independence was too far advanced to be checked even by the trials of Valley Forge, and instead of concession and compromise, the colonies made an alliance with France, the foe of twenty years before, to fight the war with Mother England to a finish. In this France was not so much disinterestedly championing the cause of American democracy as it was seeking to damage the foe which had defeated her fifteen years before.

Roger Sherman was one of the stabilizing forces of the Constitutional Convention. The Connecticut delegates were the leaders of the small states delegations, and Sherman and Ellsworth were jointly credited with the authorship of that part of the momentous "Connecticut Compromise" whereby each state was given two senators. This pacified the small states by allowing them equal representation with the large states in the Senate, and left the large states in control of the House of Representatives by basing representation therein on population, as had been proposed by the "Virginia Plan." Without

this vital compromise it is most likely that the Convention would have adjourned without having written a Constitution.

When it came time to organize the new national government after the Constitution had been ratified by the requisite number of states, it was impossible for Connecticut to make United States Senators out of all three of its delegates at Philadelphia at once, so Roger Sherman was sent to the House of Representatives. When William Samuel Johnson left the Senate two years later, Sherman was chosen as his successor. He remained a senator until his death three years later.

As a senator, Roger Sherman represented the finest flower of New England integrity and high devotion to duty. In appearance he was tall and slender. His manner was somewhat austere, and in his plain and neat clothes he could have been taken for a clergyman. When he arose in Congress to speak his colleagues were always struck by his Puritan appearance, and as he spoke he made gestures which were the same as he had once used at his shoemaker's bench in waxing and drawing the thread through the soles he was mending. He spoke but little, for it had always been one of his maxims: "When in a minority talk; when in a majority vote."

He was a valuable factor in establishing the new government. He aided Madison in piloting the first ten amendments to the Constitution through Congress. These constitute the national Bill of Rights, and he felt so strongly about them that he argued that they be considered merely as corrections of the original document, instead of as outright amendments thereto.

To his last days Sherman enjoyed talking about his experiences in the days of the Revolution. One day one of his grandchildren who had listened to his recitals with anxious interest at last asked the staid narrator, "Grandfather, did any one help you win the Revolution?" His life motto was, "Know thyself and make thyself the master."

He died on July 23, 1793. George Washington had just begun his second term as President and John Adams was again the presiding officer of the Senate, of which he died a member, and which then met on the second floor of the Federal Building in Philadel-

phia. He was on his knees at family prayers when the end suddenly came. His last words were, "Not my will, but Thine be done." The following inscription is on his tomb in the old Grove Street Cemetery at New Haven:

"He was a man of approved integrity, a cool discerning judge, a prudent sagacious statesman, a true, faithful, and firm patriot. He ever adorned the profession of Christianity, which he made in youth, and distinguished through a life of public usefulness, and died in the prospect of a blessed immortality."

No man of his time left as his descendants a finer family than Roger Sherman. He was twice married and had in all fifteen children. From one of his daughters came George F. Hoar and Rockwood Hoar, of Massachusetts. The former was long famous as a member of the House and Senate, and for his autobiography. Rockwood Hoar was an attorney general in the cabinet of U. S. Grant, and one of the nation's great lawyers. Their father also went to Congress from Massachusetts as did a son of George F. Hoar.

From another daughter came another grandson, William M. Evarts, the New York lawyer who took part in many famous legal battles, including the impeachment trial of President Andrew Johnson; took part in the Hayes-Tilden contest of 1877; and was Secretary of State in the cabinet of Rutherford B. Hayes. Evarts inherited the wit of his mother: when George Washington visited the home of Roger Sherman, she opened the door for the distinguished guest as he was leaving, and he gallantly said to her, "I wish for you a better office," to which she quickly replied, "That would be to let you in!" When a young lady, she was associated with a daughter of Oliver Ellsworth in conducting a school for colored children in New Haven, which was contrary to a state statute forbidding the teaching of Negroes.

His son-in-law, Simeon Baldwin, went to Congress from Connecticut; a grandson, Roger Sherman Baldwin, became a United States Senator from Connecticut, and a great-grandson, Simeon E. Baldwin, was a governor of that state.

Sherman had reminded his colleagues in the Constitutional Convention, many of whom feared the future growth of the West,

that their descendants would enjoy the future prosperity of that still uncharted region. Senator John Sherman, of Ohio, twice a cabinet officer and also a candidate for the presidential nomination, and General W. T. Sherman, of Civil War fame, were descendants of the original Sherman family whose parents had done what Roger Sherman had foretold, sought the larger opportunities of the Ohio country, toward which the flood tide of immigration began only one year after the Constitutional Convention. The Ohio Company, directed by citizens of Massachusetts, Roger Sherman's native state, was organized for the primary purpose of furnishing better opportunities for former soldiers of the American Revolution, and Marietta became the mecca for these early home seekers.

When Buchanan became President on March 4, 1857, one Maine mother had three sons in Congress, one from a Maine District, one from Illinois, and one from Wisconsin. A few years later a fourth son from the same family went to the House and Senate from Minnesota. The family name was Washburn. The prophecy of Sherman had been fulfilled.

### *OLIVER ELLSWORTH*

Oliver Ellsworth was one of the very great men in the early history of the United States. Upright, devout Puritan that he was, he was also the sincere patriot, great lawyer, famous judge, skilled legislator, and successful diplomat, and died one of the most honored men of his country. Although his signature does not appear at the end of the Constitution, he was one of its real makers. He was called home by his judicial duties before the close of the Convention, and was not able to return to Philadelphia in time to affix his signature in token of his approval of its work.

His life began and ended at Windsor, Connecticut, not far from Hartford, where he was born April 29, 1745. Windsor was one of the three towns which subscribed to the Fundamental Orders about one hundred years before his birth, which union was one of the first instances in American history of united action pursuant to written agreement of the kind which eventually led to the writing of our Federal Constitution.

Oliver Ellsworth was the son of Puritan parents whose ancestors had come to Connecticut from England many generations before his birth. He went to college, first for two years at Yale, then for two years at the College of New Jersey, now Princeton, to which he was persuaded to go by a college companion, Waigstill Avery.<sup>5</sup> They graduated in the class of 1766, and each later became a famous lawyer, one in North Carolina, and the other in Connecticut. Princeton, Yale and Dartmouth Colleges later conferred upon Ellsworth the degree of Doctor of Laws.

His life as a young lawyer was one of struggle and hardship. By nature he was sober-minded and thrifty. He lived on a farm which he cleared by his own hands, and sold the wood while he sought to gain a foothold in his profession.

In this he was successful, and his solid character and genuine ability won him rapid promotion. When a young man he overheard a compliment which thrilled him and sent him on in confidence to success. He moved to Hartford in 1775. He was prosecuting attorney of Hartford County as a young lawyer, and later became a member of the governor's council, the state senate of colonial days. He saved his money, and in his last years had money to loan at interest, owned much real estate, and had stock in a local broadcloth mill. He built and sold houses, and it is said they were still sound fifty years afterwards.

Like Johnson, and his fellow Congregationalist Sherman, who was Ellsworth's model in life, he was a devout and genuinely pious churchman. He walked to and from services, even when an old man, lest he appear more affluent than his less successful fellow worshippers. One of his maxims was, "Do not talk to people about what they do not understand;" another, "If you feel your superiority to others, do not show it in public." But though a stern Puritan and conscious of his own worth, he was democratic at heart. In his later years he enjoyed working in a general store he established for his sons and in mingling with common people.

Ellsworth was in the Continental Congress for seven years beginning in 1777. In 1782 and 1783, together with Madison and Ham-

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<sup>5</sup> Ellsworth was one of the founders of the Cleosophic Society at Princeton.

ilton, he worked upon one of the first efforts to amend the Articles of Confederation in order to strengthen the weak national government. When Robert Morris resigned as Commissioner of Finance, after he and Gouverneur Morris had used every known means to preserve the dwindling credit of the new government, Ellsworth was requested to serve as Morris' successor, but declined. The work done by the two Morrises was thereafter performed by a finance committee.

Ellsworth became a member of the Supreme Court of Errors of Connecticut in 1784, where he served for the next five years. It was also known as the Governor's Council. As a judge, he had his own ideas about imposing punishments suitable to the crime. He once required a prisoner convicted of horse stealing to ride a wooden horse, and another who was convicted of bigamy was sentenced to wear a halter around his neck.

In 1787 he was in his third year as a member of the Connecticut superior court when he was chosen to the Philadelphia Convention. His contributions to the Constitution were many, but two stand out particularly. The first was on the floor of the Convention, when as a representative of a small state he suggested, that instead of having a legislature of two houses, the membership in each based on the population of each state, the Senate be composed of an equal number of delegates from each state to be elected by the state legislatures. Out of this proposal, which he made jointly with his colleague Sherman, grew the famous "Connecticut Compromise," which was worked out in detail by a committee to which Ellsworth was appointed, and without which it is safe to say that the Convention would have broken up without writing a constitution. In order to win his point Ellsworth compromised on every other issue, even agreeing to the provisions in the Constitution in regard to slavery, to which as a New Englander and a Puritan he was in principle utterly opposed.

Ellsworth's other great contribution to the Constitution was as a member of the committee of five to which the various plans for a constitution, together with the proposals made on the floor of the Convention, were submitted for the drafting of the final instrument. The Convention adjourned for ten days while this committee, in the



last hot days of July, worked out the draft of what became, with comparatively few changes, the Constitution which we have today.

After this committee's work was submitted to the Convention each provision was discussed and worked over by all the members present, but he did not participate in all of this work of revision. His judicial duties in Connecticut called him home shortly afterwards, and he was not able to sign the Constitution when the Convention adjourned as he would have liked. However, when the Connecticut ratification convention met the following year he was the principal speaker at its opening, and was one of the strongest advocates of ratification.

The citizens of Connecticut were sincerely grateful for the new Constitution, from which they expected much. In appreciation they elected all three of their delegates at Philadelphia to offices in the new Federal Government. Delaware also chose its first Senators from among its delegates at the Philadelphia Convention. In one of the states, Virginia, in which the state legislature was hostile to the new national government, none of the signers of the new Constitution were chosen to the first Senate.

Oliver Ellsworth was an outstanding member of that first Senate, in which he was Washington's spokesman, as was Madison in the House. He was handsome and noble in appearance in his white ruffled shirt, silk stockings, and silver knee buckles. His dignified bearing created much of the awe which Washington habitually inspired, and his polished speeches led President Dwight, of Yale, to call him the Cicero of that gifted group of men.

His services to the new national government were long, varied, and of the highest importance. John Adams called him the firmest pillar of George Washington's administration. He was the principal author of the law which set up the first national judicial system; other senators who assisted him were Paterson, of New Jersey, and his colleague, Dr. William Samuel Johnson, of Connecticut. The judicial system he helped establish is, with comparatively few changes, that in effect today. He also joined Robert Morris, Butler, and Strong in the formulation of plans for financing the new Government.

In recognition of Ellsworth's outstanding gifts, President Wash-

ington early in 1796 named him to the Chief Justiceship of the Supreme Court. John Jay, the first Chief Justice, had resigned some months before, and John Rutledge, of South Carolina, whom Washington had named to succeed him, had been rejected by the Senate. In those days the Supreme Court as such had few duties, for there were as yet few cases brought before it and none of importance while Ellsworth was Chief Justice, but the work imposed on its members was none the less important. It was he who swore in John Adams as President on March 4, 1797. The first Supreme Court Justices were required to assist the lower Federal judges and hear cases of first instance tried before them, and in the course of this work, he became a familiar figure as he rode the circuit in New England. Sometimes he rode horseback, and stories are told of the austere Puritan's kindness in inviting rural lads to ride behind his saddle as he went about on his judicial errands. One incident is related of his repairing the damaged wheel of a stage-coach in which he traveled, while the other passengers looked on unaware that one of the nation's great lawyers was serving as their blacksmith.

In 1798 conditions became acute between the United States and France. Insults to Charles Cotesworth Pinckney and his colleagues by the Revolutionary French ministry led to the famous report to Congress in which President Adams told of bribes offered to American representatives by certain members of the French Government, whom he designated merely as "X, Y, Z" to avoid further embarrassment. American feeling ran high, Alexander Hamilton and others urged war, former President Washington accepted the nomination of Commander-in-Chief of the American Army, the anti-French Alien and Sedition Acts were written on the statute books, the navy was hastily prepared for a war footing, the office of Secretary of the Navy created, and on the sea off the New York coast an unofficial state of war already existed.

Adams, who from his years abroad knew something of the ways of European diplomacy and distrusted Hamilton, was for peace, and on February 26, 1799, took Ellsworth from his judicial duties and sent him and Governor William R. Davie, of North Carolina (who like Ellsworth had failed to sign the Constitution they both

approved), to join Vans Murray, the former minister to Spain, in an effort to adjust the delicate conditions which prevailed. For the second time in five years the head of the judicial branch of the government was sent abroad by the President on a delicate diplomatic mission, Jay the first Chief Justice having been the first.

The voyage in mid-winter across the Atlantic was hard, as was the long carriage journey across Spain and southern France from Lisbon to Paris, but the war was averted, much to the chagrin of Hamilton and his friends. Ellsworth was away from America for two years,<sup>6</sup> and in that time he and his fellow commissioners also found time to encourage the rising Napoleon to take the Louisiana territory from Spain, which led to its ultimate sale to the United States three years later when Thomas Jefferson was President. Historians have never given due praise for these two notable diplomatic achievements.

Ellsworth was a worn and tired man when he returned home from Europe, where he had jeopardized his life in service to the young nation and had in apprehension of his own death resigned as Chief Justice. His family and servants gathered to greet him on his return, but he allowed all human faces to remain for the moment unnoticed until he had reached his home, bowed his head on its gatepost, and fervently breathed a prayer of thanks to God for his safe return.

During his absence the seat of the national government had been moved from Philadelphia to Washington, including the Supreme Court, and many other changes in the completion of the nation's affairs were taking place. George Washington had died, Adams and the Federalists were fast losing popular favor, and it was becoming plain that Jefferson and the anti-Federalists were about to come into power.

But for all this he now cared little. John Marshall had succeeded him in the closing days of Adams' administration after John Jay had declined to take the post a second time, and Ellsworth looked forward to a life of retirement during his remaining days. He was persuaded to serve again as a member of the Governor's Council, but never again held a national office. He was offered the chief

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<sup>6</sup> While abroad, Ellsworth visited England and was shown much honor by the bar of England.

justiceship of his state's new Court of Appeals and accepted, but resigned before serving thereon. He died November 26, 1807, and was buried in the old cemetery at Windsor on the Connecticut River.

At his death Oliver Ellsworth was regarded as the great man of Connecticut and New England. Only John Adams excelled him in fame. Nevertheless he was in many ways an odd character. Like Bushrod Washington, Henry Clay, and others of the nation's early statesmen, he was a generous user of snuff, very absent-minded, and sometimes would eat an entire meal absorbed in deep thought and without speaking a word to any one about him. His home, a local show place, was called "Elmwood;" about it were planted thirteen elms representing the original thirteen states.

He had been a devoted husband and father. He took much pride in his twin boys among his seven children, and two of his sons bore their father's name. George Washington visited Ellsworth's home on his New England journey when President, and amused the Ellsworth youngsters by singing ballads for their benefit. All of his sons became Yale men. One of them, W. W. Ellsworth, was Governor of Connecticut and a member of Congress when Jackson was President; a second was one of the founders of America's first life insurance company; another was the first United States Commissioner of Patents. One son married the daughter of Noah Webster.

The family name is still a prominent one in and about the city of Hartford, as is also that of his wife's, who was a Wolcott, one of whom was a signer of the Declaration of Independence.

## V

### MASSACHUSETTS AND THE CONSTITUTION

**M**ASSACHUSETTS was a vital factor in all the epochal events of our early history. It was there the Pilgrims landed in 1620, it was there, one hundred and fifty years later their descendants raised a rebellious cry against the motherland when their political rights were violated, and it was Massachusetts which led in the plans for the Declaration of Independence.

And yet it was a Massachusetts member of the Continental Congress, Rufus King, who tried to obstruct the plans of the Annapolis Conference which called for the Constitutional Convention. He did not change his position until the last minute, but while the other members of the Continental Congress who approved the call for the Constitutional Convention did so because it was evident that such a convention would be held regardless of the attitude of the Congress, King's change of front was for other reasons. It was caused by the situation which arose in Massachusetts, his own state, as a result of Shays' rebellion.

Shays and his followers were from the rural and western parts of the state, and their rebellion was an extreme example of the perennial conflict between the city and country districts. The rebellion was only put down by the use of arms, and for a considerable period the issue was genuinely in the balance. The only force available to perform this service was the state militia, itself poorly organized and recruited in considerable part from the disaffected areas. In such a crisis a national military force on which the governor might have called would have been invaluable, but there was none. King and others like him suddenly had it forcibly brought home to them that only in union there was strength, and henceforth a strong national government became an unavoidable necessity.

The four delegates from Massachusetts were not always unanimous on the Convention floor at Philadelphia. Two of them, Gorham and



*Nathaniel Gorham*

*Rufus King*





Gerry, were business men, while the other two, Strong and King, were lawyers, and there were times when law and business were not in agreement. When the time came to sign the Constitution, only Gorham and King affixed their names to it, though Gerry was there in a sulky mood after having discussed often and long most of its features. Strong returned home before the time for signing had arrived and was not present at the end.

The Massachusetts Convention called to consider the Constitution was the largest of those called for that purpose. Three hundred and fifty-five delegates were chosen to go to Boston, where they met late in January, 1788.

John Hancock, Governor of Massachusetts, dressed in robes of almost royal gorgeousness, was chosen as President of the convention. William Cushing, Vice-President of the convention, was the same Cushing who was to be appointed to the first Supreme Court of the United States by Washington, and later, in 1796, to decline the Chief Justiceship as the successor to John Jay after Washington had nominated him for the post and he had been confirmed by the Senate.

The debates in the convention were largely between the city delegates and the rural representatives, a number of whom prefaced their speeches by saying they had left their plows to attend the convention. Suffolk County, which included Boston, and its adjoining counties of Middlesex, Bristol, Worcester, Hampshire, and Berkshire voted sixty to twenty-eight against ratification. Forty-three of the fifty delegates from Worcester County opposed ratification. It was in this western part of Massachusetts that a great deal of the discord had arisen which threatened the Commonwealth. Eighteen former followers of Shays of odious fame were there as delegates. These were all but unanimous in their opposition to the Constitution, which had come into existence partially on account of their rebellious acts. Their objections could also be traced to their mistrust of the lawyer and business groups who favored ratification, for Shays' rebellion had been directed against courts, judges and lawyers as much as against the government itself. The delegates from the section now included in the state of Maine, which was then a part of Massachusetts, voted twenty-five to twenty-one for ratification.

Among the most effective leaders in favor of ratification were three



of the delegates to the Constitutional Convention, King, Gorham and Strong; the fourth, Gerry, had been defeated, but was invited to a place on the convention floor to answer questions on the instrument he had helped frame.

Another of the strong influences for final ratification in Massachusetts was Samuel Adams, who had been "on the fence" when the convention opened. He was the liberal leader of the state, and that element as a rule followed his leadership. When a delegation of artisans and workmen, led by Paul Revere of the midnight ride, came and requested him to support the new Constitution the die was cast. Adams, who had an acute ear for public sentiment, listened, saw the light, and henceforth stood for ratification, though also for a proposal for amendments to the Constitution after ratification. His decision swung the liberals into line, but as fate would have it, the people voted to send the brilliant young Fisher Ames to Congress rather than the stern old patriot, when those two battled a few months later for a seat in the first Federal Congress.

Strange as it may seem today, the delegates to this convention were most opposed to the Constitution because under it the members of Congress were not to be selected annually, as the members of the Continental Congress had been under the old Articles of Confederation. But it must also be kept in mind that the Governor of Massachusetts was chosen annually until 1920 when the state's constitution was amended and the term lengthened to two years.

More than a score of ministers sat as delegates, a greater number than in any other of the state conventions, and a number of them were active in debate. The ministers who opposed the Constitution did so largely because the Constitution did not require a religious test to hold public office, and one declared that no man could be a good citizen who was not a Christian. The fear of a Pope some day ruling America, a bogey which politicians and others yet invoke successfully in some sections of the land, was one of the dangers pointed out by another zealous Puritan delegate.

The compromise in the Constitution on the slavery issue stirred the emotions of many of the Massachusetts leaders, who had seen slavery prohibited in their state by their constitution written seven

years before, and it required a bit of genuine patriotism for many of them to approve the document, even though the word "slavery" had purposely been omitted therefrom. Wendell Phillips and William Lloyd Garrison had not yet been born, but the seeds of their enmity to human slavery were at work already in their ancestors.

But at last, after a long session, the convention voted on February 6th to approve the Constitution by a vote of 187 to 169. It then promptly voted to recommend nine amendments for future consideration by the states. Massachusetts was the first state formally to dare propose any amendments to the Constitution, and thereby set the example for the flood of such proposals which soon followed from other states.

Massachusetts was the second of three large states to approve the Constitution. Pennsylvania was the first of the three by several months, and the friends of the Constitution could feel that thereafter their cause was well on the road to final success.

#### *RUFUS KING*

Rufus King, one of the two signers of the Constitution for the State of Massachusetts, was not a native of the present State of Massachusetts, and most of his life after the Constitutional Convention was spent in New York State.

He was born on March 24, 1755, at Scarboro, Maine, which was then part of Massachusetts and remained so until 1820. In that year another member of the King family, William King, led in the movement which resulted in Maine withdrawing from Massachusetts and becoming a state in its own name, when a non-slave state was necessary to counterbalance Missouri, a recently admitted slave state. A statue of William King is in Statuary Hall in the Capitol at Washington.

The father of Rufus King was a wealthy Maine lumber exporter who was connected with banking interests in New York City. He was also a farmer and merchant. The grandfather had come to New England from Kent, England, and the family had been one of honor and intelligence for generations before Rufus King came on the scene to lift the family standard still higher.

The family believed in the blessings of education, and the brilliant

and attractive young Rufus was sent down to Newburyport in Massachusetts to be prepared for Harvard. At Harvard he ranked high as a scholar and orator, and graduated in the class of 1777, one year after the Declaration of Independence and two years after the Battle of Bunker Hill, the sound of whose guns could be plainly heard at Cambridge not far away.

Like many alert and patriotic young Americans of his day, Rufus King went from campus to camp and took part in the closing scenes of the Revolution, being an aide to General Sullivan in his expedition to Rhode Island.

In 1780, three years after leaving college, he was admitted to the Bar of Massachusetts. Two years thereafter, he was made a member of its House of Representatives, and two years later, in 1784, he was sent as one of its delegates to the Continental Congress. His career had thus begun on a national scale before he was thirty years of age.

No young American of his day began and ended his life on a grander scale than did Rufus King. He was personally handsome and magnetic. He was a well educated lawyer, and above that, he had the gift of eloquence.

He was in the Continental Congress during the debate on the resolutions adopted at Annapolis and no one was at first more opposed to the calling of the Constitutional Convention than he. He well knew the success of the Convention would mean the end of the Continental Congress of which he was an active part. He went home and spoke against the plans for the Constitution. But the rumblings of the Shays' rebellion soon convinced him that a stronger arm than Massachusetts alone was needed to check such ominous outbreaks, and thereafter he led in the plans for the Congress to approve the Convention then in the making. In the poorly attended expiring Congress, King was a leader, and took an active part in the fight for amending the Articles of Confederation to permit a national tariff act, which however was defeated by the vote of Rhode Island, after twelve other states had approved it. He was active in the fight to forbid slavery in the Northwest Ordinance and later, as a Senator, favored using the proceeds from

the sale of public land to establish a separate territory for the enslaved portion of America.

King was also one of the group of Continental Congressmen who attempted to carry out the plan of Jay to give the control of the Mississippi River to Spain for twenty-five years in exchange for certain commercial advantages. Seven of the thirteen states supported such a plan, but it failed because the votes of nine states were required to make the proposal operative.

It was during this period of his life that he made secure his future politically, socially, and financially by marrying Mary Alsop, the young and beautiful daughter of John Alsop, President of the New York Chamber of Commerce and a former delegate to the Continental Congress. Among the notables present were Elbridge Gerry, of Massachusetts, a fellow member of the Continental Congress, and young James Madison, who was serving again as a congressman from Virginia.

The last service performed by Rufus King as a citizen and servant of the State of Massachusetts was as a delegate to the Constitutional Convention. There he was recognized as one of the strong young men. Though he was then only thirty-two years of age, his cultivated and attractive manner as a speaker and his gentlemanly bearing won for him a high place.

He was a member of the important committee on style and revision which finally prepared the Constitution as we know it today. On the Convention floor he showed a provincial attitude in his jealousy of the growing West, and was a party to some of the unsuccessful plans proposed to check the Western migration.

King did not agree with some of his fellow New Englanders who wanted Congressmen to be elected annually. He frankly said, "We legislate too much," which is more true now than then. His notes of the Convention were published in 1894, one hundred and seven years after he had made them.

When the fight for ratification opened in Massachusetts, he was elected a member of the Massachusetts ratification convention and did his part in carrying his state for ratification. Immediately thereafter, he and his young aristocratic wife moved to New York State, where he lived the remainder of his years.

Rufus King was always a child of good fortune. Though not a native New Yorker, his popularity was so great that less than two years after moving to New York, he was chosen, after a long deadlock in the Legislature, to represent the state in the first United States Senate. He triumphed over local political celebrities and won the senatorial toga along with General Philip Schuyler, the honored father-in-law of Alexander Hamilton, who had won his greatest honors as a trusted general under Washington.

In the Senate King, who was a born leader, was active and influential. He was a true Federalist, and Washington urged him to become Secretary of State when Randolph suddenly resigned. He declined the cabinet position, but did agree one year later to succeed Thomas Pinckney, of South Carolina, as minister to England. He reached England soon after the famous Jay Treaty had become operative. Pursuant thereto England actually, for the first time, was withdrawing her military forces from western America, though the original peace treaty had been signed by both countries more than a dozen years before.

So successful was he as our minister at the Court of St. James, that not only was he reappointed by John Adams when he became President, but Jefferson also asked him to remain in that post when he was swept into the Presidency on a strong anti-Federalist wave in the campaign of 1800. While in England, King urged against the impressment of American seamen in the English Navy, one of the causes of the War of 1812.

Rufus King remained in England until 1803, when he resigned and returned to New York. The rising tide of anti-Federalism in the Congress of that day did not deal generously with the aristocratic minister to England, who was forced to provide at his own expense for the return of his family and household belongings. It is said that he chartered a small sailing vessel and in it brought from England not only his family, but the family milk cow, which meant so much during the voyage to the health of his fine and promising young sons. They had had the future Lord Byron for a schoolmate while in school in England.

King was again chosen in 1813 to represent New York in the Senate. Though the New York Legislature was then in the hands of the

anti-Federalists, he was their choice when no member of their own group could muster enough votes to win. Even so great a Democrat as Martin Van Buren, destined later to be President, supported him.

When he came back to the Senate, which then met in the new Capitol at Washington, he continued to be recognized as one of the great men of the nation. He both looked and acted the part of a statesman. He always dressed formally to attend its sessions and was known all over the land as a Senator of ability, integrity, and great eloquence. The fires of war were burning and the Federalist party, of which he was the recognized head after the death of Hamilton, was rapidly dying, especially since its failure to support Madison in his defense of America in the War of 1812. King was not for the war, but was patriotic enough to support the President when the die had been cast and war was on.

One of his special antipathies was for Albert Gallatin. He led the successful fight to keep Gallatin out of the Senate from Pennsylvania, on the ground that he had been elected a Senator before he had been in America the nine years required by the Constitution. He also attacked Gallatin later as Secretary of Treasury and opposed his appointment as one of the Peace Commissioners at the end of the War of 1812.

After serving from 1813 to 1819 as a Senator, King left the Senate to be succeeded by an anti-Federalist. The Federalist party was dead, and King himself had been the last Federalist candidate for President in 1816, when James Monroe was overwhelmingly elected.

The next few years of his life were those of a gentleman of wealth, fame and leisure. He served in the New York Constitutional Convention of 1821, where his influence was considerable. He opposed the Missouri Compromise of 1820.

King was active in the movement which resulted in Congress appropriating a gift to Lafayette on his memorable visit to America in 1824-25.

When John Quincy Adams won the Presidency over Jackson in 1825 by the votes of the House of Representatives, the Electoral College having been unable to decide the contest, Adams requested the fine old Federalist statesman of seventy years to go again to England and represent the new Adams administration as a loyal

friend of his aged father. King reluctantly consented and again went to England, where he remained for only one year. He felt the weight of the passing years, and wisely resigned, to retire to his fine estate of "King's Manor" on Jamaica Island near New York. There he lived quietly until his death on April 29, 1827. He was buried in the nearby Grace churchyard.

Rufus King was known as a leader of measures and not of men. By breeding, education, and natural temperament, he was not a rabble-rouser. Though a candidate for Vice-President on the Federalist ticket with the renowned General Charles Cotesworth Pinckney in the campaigns of 1804 and 1808, and a candidate for President himself in 1816, he aroused no popular enthusiasm. The party he belonged to had written the Constitution and started the new Government on its way, but newer and more democratic forces had taken charge of the ship of state.

He was a devout Episcopalian. The fact that his first-born son, John Alsop King, later became a congressman and Governor of New York for two years (1856-8), and another son, Charles King, became President of Columbia College, attested to the fine character of his own home.

John Alsop King was one of the founders of the Republican party in 1854, and was considered as a running mate of Fremont in the campaign of 1856.

Another son, James Gore King, was a successful New York merchant who lived in New Jersey, where he was sent to Congress. A fourth son, Edward King, located in Chillicothe, Ohio, and was one of its first citizens.

A great-grandson of Rufus King who bore his name was the first Superintendent of Schools in Milwaukee, Wisconsin. The fear of King and his colleagues in the days of the Continental Congress was realized as the west drew from the east many of its best in blood and brains. A great-great-grandson who also bore the name of Rufus King was recently in the United States Navy.

When Rufus King passed on, only Few, of Georgia, and the great Madison, of Virginia, were left among the thirty-nine signers of the Constitution. The reign of democracy under Jefferson and Madison and Monroe was temporarily over and John Quincy Adams was the

capable, unhappy, and unpopular ruler of the government which King had helped start on its way forty years before.

#### NATHANIEL GORHAM

Nathaniel Gorham was the only Massachusetts delegate at Philadelphia who was not a Harvard man. He and Rufus King of the same delegation were the only ones whose names were affixed to the Constitution at the end.

Like all of his colleagues from Massachusetts, he was born within its confines. He was a native of Charlestown, then the Brooklyn of Boston, where he was born May 27, 1748, being a descendant of John Howland of the *Mayflower* party.

Gorham did not have the benefit of a higher education, but early in life entered business in Boston, where he achieved wealth and distinction as a great merchant. His political life began with his election to the Colonial Legislature of Massachusetts in 1771, where he served for four years. His next service was as a member of the Massachusetts war board. He was in the Massachusetts Convention of 1779 which wrote its important and far-reaching constitution, and was for two years a member of its first Senate. In 1782-3 he represented Massachusetts in the Continental Congress. In 1785 he was again a member of the Congress, which honored him with its presidency. However, at the time Gorham presided over the small groups which occasionally met in the name of the Continental Congress, that body's prestige had sunk to a low ebb and less than twenty-five members regularly attended its sessions.

The poor response of the states, when called upon to pay the requisitions asked of them by the Congress, no doubt greatly discouraged the successful man of business in the possible future of a democratic Union. Gorham had had personal experience on the subject. While in the Continental Congress he was sent down to Trenton, the capital of New Jersey, in company with the brilliant and bold young Charles Pinckney, of South Carolina, and the solid and cautious William Grayson, of Virginia, to urge the New Jersey legislature to rescind a vote it had taken to pay no more requisitions into the national treasury. The mission was only partially successful, for while the vote not to pay was rescinded and a vote was taken to



pay the requisitions demanded, no provision was made to raise the money for their payment.

It was well for Massachusetts and the nation that Gorham was chosen as a delegate to Philadelphia. He was one of the few big business men among the many lawyers present, and that he was chosen as chairman of the committee of the whole early in the sessions of the Convention was a great tribute to his ability and impartiality as a presiding officer.

He also was chosen as one of the five members of the committee on detail which had before it for consideration the several plans for a new constitution which were offered early in the session. All the other members of that important committee were great lawyers. Three of them, Wilson, Ellsworth, and Rutledge, its chairman, later served on the Supreme Court of the United States. Randolph, the fifth member, was the first attorney-general of the United States.

Gorham was skeptical over the future of the nation and chided his fellow delegates for their optimism in speaking of its future. At one point during the debates, he frankly expressed his own doubts that the nation would continue for one hundred and fifty years, and has been charged with the authorship of a suggestion that a son of George III be invited to America and made king. Perhaps, in the general discouragement of the moment, the spirit of the penitent prodigal had pervaded that part of the nation which yearned for stability and security at all costs.

He was one of the few men at Philadelphia who did not achieve additional political fame when the Convention was over. He was defeated for a place in the new Congress by Elbridge Gerry, who had failed to sign the Constitution, and who had been defeated for a place in the Massachusetts ratification convention. It was therefore left to his son, Ben, who represented a Massachusetts district <sup>1</sup> a few years later, to represent the Gorham family in the Federal Congress established under the new Constitution.

Like other men of wealth of his day, Gorham was drawn into the mania for land speculation. He and Oliver Phelps, of Massachusetts, went down into western New York and contracted to buy a million

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<sup>1</sup> He succeeded Daniel Webster in Congress.

acres of land in the Genesee Valley section of that state, located in what is now Livingston and its adjoining counties. The venture was not a financial success, and Gorham and his associates saw their entire investment vanish. Sales of the land could not be made fast enough to meet the payments which they had contracted to make, and the usual collapse followed.

His life came to an end on June 11, 1796, at Canandigua, New York, near the scene of his misfortunes, a few weeks before Washington issued his famous farewell address, and nine years after he had signed the Constitution. He was buried in the Phipps Cemetery at Charlestown, Massachusetts, in the city where his life had begun forty-eight years before.

Gorham's mind and character had enduring qualities which were reflected in the beautiful soul of his great-grandson and the grandson of Lydia Gorham—Phillips Brooks—the beloved Episcopal bishop and religious leader of Massachusetts whose unexampled life touched so many other lives, both in America and abroad, and who left behind him as ever-burning light when he passed on near one hundred years after his less renowned ancestor.<sup>2</sup>

#### *ELBRIDGE GERRY*

Elbridge Gerry was one of the best known of the sixteen delegates to the Constitutional Convention whose name does not appear among the signers of the Constitution. He was also one of the three who did not sign who yet remained at the Convention until its close, and who gave explanations for not signing the instrument they had helped to make. Randolph and Mason, of Virginia, were the other two.

He was the only one of the four delegates from Massachusetts at Philadelphia who was not a member of the Massachusetts ratification convention. He was also one of the few men at Philadelphia who had signed both the Declaration of Independence and the Articles of Confederation.

Gerry was a native of Marblehead, Massachusetts, where he was born July 17, 1744. He was the third in a family of twelve children. His father, a wealthy merchant who bought and sold codfish,

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<sup>2</sup> Edward Everett and Charles Frances Adams each married a granddaughter of Nathaniel Gorham.

had come from England fourteen years before the birth of his son destined to become famous. The son, like most sons of the successful in the Massachusetts of that day, was sent to Harvard where he graduated with honors in 1762, when only eighteen years of age. After leaving college he devoted himself to business with his father at Marblehead. His first experience in public life was in 1772, when he was elected a member of the Massachusetts Colonial Legislature, where he served for three years. Samuel Adams was the fiery leader of the radical forces of that day and young Gerry quickly allied himself with that faction in Massachusetts politics. As the war fever arose and anti-English sentiment developed, he became a leader among the Revolutionary forces. One of his good friends was Warren, who fell later at Bunker Hill, who was his bedfellow the night before that battle.

We next find Gerry at Philadelphia serving as a Massachusetts delegate to the Continental Congress of 1776, which resulted in the Declaration of Independence. John Hancock, John and Samuel Adams were his colleagues and fellow signers of the Declaration. Gerry left the Congress before it was ready to be signed, asked John Adams to sign for him, but later returned and affixed his own signature to it.

He was a useful member of the Continental Congress. He was an educated patriot, business man, and financier, and such men were needed in Congress then as always. He served on many important committees, particularly on the committee which furnished supplies to the Continental army. He favored a bill to pension the Revolutionary soldiers and opposed the plan to allow each state an equal vote in the Congress. When the Congress voted to thank John Hancock, his fellow delegate, for his services as President, Gerry opposed it on the ground that Hancock had only done his duty.

When the Articles of Confederation were submitted to the states for ratification, it was his honor and privilege to be one of the signers of that instrument for Massachusetts.

He was out of the Congress from 1780 to 1782, but was returned at the end of that period to remain three more years. One of the pet interests of Gerry at that period was the young American navy, which he did much to develop. He was chosen to represent Massachusetts at the Annapolis conference but did not arrive until after it was over.

He was a persistent and industrious member of the Convention which wrote the Constitution. Only five other members—G. Morris and Wilson, of Pennsylvania; Madison and Mason, of Virginia; and Sherman, of Connecticut—made more speeches than he. He served as chairman of the important committee which had charge of the compromise measure on senatorial representation and with the aid of Strong, his colleague, tied the vote of Massachusetts when the vote on equal representation in the Senate was taken, thereby greatly aiding in the victory won by the small states in obtaining equal representation in the Senate.

Though defeated in his desire to be a member of the Massachusetts ratification convention, Gerry had his pride soothed by being invited to attend the convention and answer questions about many of the features of the Constitution. He defeated Nathaniel Gorham for a place in Congress a few months later, where he served for four years.

The next public service performed by him was as a member of the special mission sent to France by John Adams in 1797 to adjust the differences then existing between France and the United States. The United States had failed to support France in the Napoleonic Wars, though the treaty of 1778 had provided for each country to aid the other in future difficulties. The commission was met with insults and rebuffs and even the offer of a bribe, and so great were the indignities offered that John Marshall, of Virginia, and General Charles C. Pinckney, of South Carolina, Gerry's colleagues, left France in disgust. Gerry remained behind and made an unsuccessful effort to pour oil on the troubled waters. Only the diplomatic skill of President Adams, Oliver Ellsworth, of Connecticut, and Davie, of South Carolina, members of the second commission to France, saved the two countries from war.

Though Gerry had expressed his aversion to what he called an excess of democracy in his many speeches on the floor of the Convention at Philadelphia, he later became an ardent defender of Jefferson, and was his greatest champion in Massachusetts when the Puritan Federalists were circulating stories about Jefferson's religion, politics, and personal morals.

He had a great ambition to be Governor of Massachusetts. He was an unsuccessful candidate for that position in 1800, 1801, 1802, and 1803. He was finally elected in 1804, and again in 1810-11 for two terms of one year each.

It was Gerry who, as Governor of Massachusetts, led in the rearrangement of the legislative districts of that state in such a shape as to resemble a salamander. His act was known as the Gerry-Mander Act from Gilbert Stuart's cartoon on the subject, and the name has ever since been applied to the act of a political party in changing district lines for its own advantage.

When the War of 1812 came on he was a lone figure in supporting it in Massachusetts, and was denounced by many leading New Englanders who saw the business life of New England greatly injured by the war. He stood his ground, however, and when John Langdon refused the nomination for Vice-President at the hands of the Congressional caucus in Washington, the caucus turned to him as Madison's running mate ten days before war was declared on June 18, 1812. The Madison-Gerry ticket won easily over the Dewitt Clinton-Ingersoll ticket.

The War of 1812 was an uncertain quantity then, and Madison himself was bewildered in the White House. He had largely inherited from Jefferson the issue with England which ended in war.

When March 4, 1813, came, Madison was sworn into office in the House of Representatives at Washington, but the new Vice-President was sworn in at the State Capitol of Massachusetts. Gerry's wealth had largely vanished and he did not feel able to go to Washington merely to be sworn into an office which did not require any immediate duties. Madison, for the second time, had as his Vice-President a former foe of the Constitution he had helped to formulate.

A special session of Congress which arose out of the acute war crisis was called by Madison in May after his second term begun on March 4th.

Gerry at once took the stage-coach for Washington. Among his traveling companions was the old Federalist leader, Timothy Pickering, who had lived in both Pennsylvania and Massachusetts, and had held two cabinet positions as well as a seat in the United States

Senate from Massachusetts. When the stage halted for the night at the Inn in Hartford, Connecticut, all beds had already been taken but one, which was tendered to Gerry, the new Vice-President of the United States. True to his gentlemanly nature, he invited Pickering, his political enemy, to share his bed. No words were spoken as the two clung to its opposite sides until morning, when each aged statesman went his way oblivious of the other's presence.

He delivered his inaugural address as Vice-President on May 24, 1813, several weeks after he took the oath of office. On that day Madison was severely ill and Gerry himself was old and in feeble health. There was then no president pro tem of the Senate, and if Madison and Gerry both had died, Henry Clay, of Kentucky, the youthful Speaker of the House of Representatives, would have been President under the line of succession, which was then the law. Clay was just past thirty-six years of age, the minimum age under the Constitution to be eligible for that office, though despite his youth he had already had much experience as a United States Senator.

Gerry's career as Vice-President was destined to come to an untimely end. He died suddenly on November 23, 1814, while on his way to the Capitol in Washington to preside over the Senate. He had stopped at one of the Government departments en route to the Capitol when he became ill, and died in his carriage.

He had spent a good part of his life in public life and had lost most of his estate. At his death he left his family all but in want. His friends in the Senate wanted to give his family his year's salary, but the House opposed it. One son found employment in the Treasury Department, another joined the Navy. Peter Goelet Gerry, who was a Democratic United States Senator from Rhode Island from 1917 to 1929 and again in 1935, was a grandson of one of those sons. One grandson who bore his name went to Congress as a Democrat from Maine in 1849.

His wife, Miss Anne Thompson, of New York, and three sons and six daughters survived him. She was the last surviving widow of all the members of the Constitutional Convention.

He was buried in the old Congressional Cemetery at Washington not far from the grave of Clinton, who also had died as Vice-President under Madison. A few years later Congress erected a

marble monument above his grave, which in 1936 was enclosed by an iron fence. The visitor could read upon his tomb these words: "It is the duty of every citizen, though he may live but one day, to devote that day to the good of his country." The quotation is from Gerry's own words used in an address made by him in Faneuil Hall in Boston.

In appearance, Gerry was a spare, dapper man, of good manners, long nose and intelligent face. He was popular with people of refinement, but not a favorite with the public.

His last home in Cambridge was called "Elmwood." It later became the residence of James Russell Lowell, poet and diplomat.

Gerry was much beloved by Harvard students, many of whom knew him well during his residence there after his return from France.

He gave the following reasons for not signing the Constitution:

"1. The duration and re-eligibility of the Senate; 2. the power of the House of Representatives to conceal their journals; 3. the power of Congress over their own compensation; 5. that Massachusetts has not a due share of representatives allotted to her; 6. that three-fifths of the blacks are to be represented, as if they were freemen; 7. that under the power over commerce, monopolies may be established; 8. the Vice-President being made head of the Senate." He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure—first, by the general power of the legislature to make what laws they may please to call "necessary and proper;" secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber to civil cases. Under such a view of the Constitution, the best that could be done, he conceived, was to provide for a second General Convention.

When the Convention was over, he sent the following explanatory letter to the Hon. Samuel Adams, President of the Senate, and the Hon. James Warren, Esq., Speaker of the House of Representatives of Massachusetts:

"Gentlemen: I have the honor to enclose, pursuant to my commission, the Constitution proposed by the Federal Convention.

"To this system I gave my dissent, and shall submit my objections to the honorable legislature.

"It was painful for me, on a subject of such national importance,

to differ from the respectable members who signed the Constitution; but conceiving, as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.

"My principal objections to the plan are, that there is no adequate provision for a representation of the people; that they have no security for the right of election; that some of the powers of the legislature are ambiguous, and others indefinite and dangerous; that the executive is blended with, and will have an undue influence over, the legislature; that the judicial department will be oppressive; that treaties of the highest importance may be formed by the President, with the advice of two-thirds of a quorum of the Senate; and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the states.

"As the Convention was called for the 'sole and express purpose of revising the Articles of Confederation, and reporting to Congress, and the several legislatures, such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union,' I did not conceive that these powers extend to the formation of the plan proposed; but the Convention thought that, to preserve the Union, an efficient government was indispensably necessary, and that it would be difficult to make proper amendments to the Articles of Confederation.

"The Constitution proposed has few, if any, federal features, but is rather a system of national government. Nevertheless, in many respects, I think it has great merit, and by proper amendments, may be adapted to the 'exigencies of government, and preservation of liberty.'

"The question on this plan involves others of the highest importance: 1. Whether there shall be a dissolution of the Federal Government; 2. Whether the several state governments shall be so altered as in effect to be dissolved; 3. Whether, in lieu of the Federal and state governments, the national Constitution now proposed shall be substituted without amendment. Never, perhaps, were a people called on to decide a question of greater magnitude. Should the citizens of America adopt the plan as it now stands, their liberties may be lost; or should they reject it altogether, anarchy may ensue. It is evident, therefore, that they should not be precipitate in their decisions; that the subject should be well understood;—lest they should refuse to support the Government after having hastily accepted it.



"If those who are in favor of the Constitution, as well as those who are against it, should preserve moderation, their discussions may afford much information, and finally direct to a happy issue.

"It may be urged by some, that an implicit confidence should be placed in the Convention, but, however respectable the members may be who signed the Constitution, it must be admitted that a free people are the proper guardians of their rights and liberties; that the greatest men may err, and that their errors are sometimes of the greatest magnitude.

"Others may suppose that the Constitution may be safely adopted, because therein provision is made to amend it. But cannot this object be better attained before a ratification than after it? And should a free people adopt a form of government under conviction that it wants amendments?

"And some may conceive that, if the plan is not accepted by the people, they will not unite in another. But surely, while they have the power to amend, they are not under the necessity of rejecting it.

"I have been detained here longer than I expected, but shall leave this place in a day or two for Massachusetts, and on my arrival shall submit the reasons (if required by the legislature) on which my objections are grounded.

"I shall only add that, as the welfare of the Union requires a better Constitution than the Confederation, I shall think it my duty, as a citizen of Massachusetts, to support that which shall be finally adopted, sincerely hoping it will secure the liberty and happiness of America.

"I have the honor to be, gentlemen, with the highest respect for the honorable legislature and yourselves, your most obedient and very humble servant.

"E. GERRY."

#### CALEB STRONG

Caleb Strong, like his colleague, Elbridge Gerry, did not sign the Constitution, but went home on account of illness in his family some time before the Convention closed. Unlike Gerry, he did not remain in Philadelphia until the end and then refuse to affix his signature to an instrument about which he had talked or argued for the past four months.

The names of Strong and Gerry will always be associated together

as the two members of the Massachusetts delegation who voted in favor of equal representation in the senate on the part of all the states, when their two colleagues, Gorham and King, voted otherwise. As a result the vote of Massachusetts was tied and thereby lost, and the small states of the north, with the aid of North Carolina in the south, won their fight for equal senatorial representation.

The names of Gerry and Strong were also associated together later in the minds of Massachusetts people as the leaders of rival political parties, Gerry being a Jeffersonian leader and Strong remaining until the end of his life an unreconstructed Federalist.

The Strong family was an old one in New England history, tracing its beginning to 1630 when the great-great-grandfather arrived from England. The family was a prolific one; sixteen children being born to Caleb Strong's great-great-grandfather, and seventeen children to his grandfather. By contrast, Caleb Strong was an only child and considered as a lone remnant of the once-prolific line.

He was born at Northampton, Massachusetts, on January 9, 1745, and there lived his entire life. He grew up under the religious tutelage of Jonathan Edwards, whose gospel of fire and brimstone is known to all students of theology and readers of religious biography. The Strong family supported Edwards when the great schism arose in his church in Northampton, and Caleb Strong all through his life had something of the unyielding attitude of mind of his family's religious preceptor.

Entering Harvard when only fifteen years of age, he graduated four years later with the highest honors of his class. He was looked upon as a most promising youth, but was stricken down by small-pox, which sorely affected his eyesight. He was unable to do military service during the war, but remained an active leader at home.

Strong was one of the committee of four which drafted the Massachusetts constitution of 1780.

Members of his family read law to him and he was able, despite his lifelong affliction, finally to become a full-fledged lawyer at twenty-seven years of age, and four years later held his first public office. For twenty-four years he served as County Attorney of his home county, a position he was occupying in 1787 when he was sent to Philadelphia to attend the Constitutional Convention. During

that period he also served in the Massachusetts House and Senate. Incidentally, Northampton was later to become the adopted city of Calvin Coolidge, the thirtieth President of the United States.

Aside from helping Gerry tie the vote on equal senatorial representation, Caleb Strong had but little part in the making of the Constitution. Like most New Englanders he favored a one-year term for Congressmen. He also opposed the electoral college system and advocated the election of the president by Congress.

The best service performed by him in connection with the making of the Constitution was in helping to overcome the opposition to it in the Massachusetts ratification convention. He was a leader there, and as a reward for his efforts was chosen as one of the first two United States Senators from Massachusetts, where he served for seven years. Tristram Dalton, a little known name today, was his colleague.

In the first Senate he served as a member of the Judiciary Committee which drafted the legislation out of which came our present judicial system. When the controversy arose over the Jay Treaty, Strong was active in its support.

The first rivalry of Gerry and Strong arose in the year 1800, when Strong was elected Governor of Massachusetts over Gerry. The biographers of Strong make much of his generous attitude on his inauguration day: when he passed the home of Samuel Adams, who had opposed him in most of his ambitions, and stood in the door of his home watching the inaugural procession go by, he stopped and shook hands with that old patriot. For seven consecutive years Strong was elected Governor of Massachusetts. It was during the rise of Jefferson as a political leader and he was the champion of the anti-Jefferson forces in Massachusetts. In 1807 he was defeated on account of his attitude toward the Jefferson Embargo Act, which was the source of great irritation during the years preceding the War of 1812.

In 1812 Strong again defeated Gerry in the election for Governor of Massachusetts, and for five more years was governor of that state. Acute issues arose during this second period as governor. When Madison called for troops to assist in the War of 1812 with England, Strong refused to call out the militia of Massachusetts to assist the

Federal Government. He took the extreme position that Massachusetts troops were for the use of Massachusetts and not for national service.

The most spectacular and unfortunate work performed by Caleb Strong was the part he played in the famous Hartford Convention of 1814, when representatives of the five New England States met and openly urged secession on the part of all New England. The main leader was Harrison Gray Otis, of Massachusetts, whose father, Samuel Otis, was the first secretary of the United States Senate. Napoleon had been marching to defeat in Europe, English troops had crossed from Canada into Maine, and now a group of anti-Madison leaders, bitter in their denunciation of the government at Washington, met to consider the very dissolution of the government. Among them was Timothy Pickering, of Massachusetts, who had served in several cabinet positions under George Washington and John Adams, but who had been summarily dismissed by Adams for disloyalty to his chief, and his utter subservience to Alexander Hamilton, who openly worked against Adams in the Federalist party. Pickering had thereafter connived with Aaron Burr and others during the administration of Jefferson for the secession of the New England States and New York.

But the peace treaty unexpectedly signed by the American commissioners at Ghent on December 24, 1814, brought a quick end to the rebel plans of Strong and his political associates. Their day was over, and a new and greater day had begun. Its high noon was to come in the administration of Andrew Jackson, who was then in the midst of winning the post-war victory at New Orleans.

Caleb Strong died on November 7, 1819, and was buried in the Bridge Street Cemetery at Northampton.

## VI

### NEW HAMPSHIRE AND THE CONSTITUTION

**N**EW Hampshire's unique contribution to our constitutional history lies in the fact that it was the ninth state to ratify the Constitution, and hence the state whose vote made it operative.

The New Hampshire delegation of two members, Langdon and Gilman, both native sons, was the smallest of any at the Philadelphia Constitutional Convention. It did not arrive until July 23rd, when the Convention was more than half over. The most controversial issues had already been in large measure worked out, and the votes on the great compromises of the Convention had been taken seven days before. Three days after their arrival the Convention took a ten-day recess for the committee on detail to work out a definite draft for a constitution, and when it reassembled on August 6th, Langdon and Gilman took but little part in the closing proceedings.

When the Constitution was submitted to the states for ratification, sentiment in New Hampshire was clearly against it. When its first convention met on February 18, 1788, with John Sullivan as its presiding officer, it was therefore wise strategy on the part of Langdon, the master political mind of the state, and the leader for ratification, to fight for time and ask for postponement of the convention that new sentiment might be created in favor of ratification. The sections near the seacoast and in and near cities were for ratification, while the rural sections opposed it, the sectional division of sentiment being similar to that in nearby Massachusetts.

Ezekiel Webster, a local political leader and former Revolutionary soldier, father of the more famous Daniel Webster, was instructed by his constituents to vote against ratification. When he came back to the second session of the convention he was marked present and



*Nicholas Gilman*



*John Langdon*



not voting when the final vote was taken. The following explanation of his position written to John Sullivan is revealing:

"Mr. President: I have listened to the arguments for and against the Constitution. I am convinced such a government as the Constitution will establish, if adopted, a government acting directly on the people of the states, is necessary for the common defense and the general welfare. It is the only government which will enable us to pay off our national debt, the debt which we owe for the Revolution and which we are bound in honor fully and fairly to discharge. Besides, I have followed the lead of George Washington through seven years of war and I have never been misled. His name is subscribed to this Constitution. He will not mislead us now. I shall vote for its adoption."

The second session of the New Hampshire convention reconvened on June 17, 1788, the anniversary of the Battle of Bunker Hill, dear to all New England hearts, and it was careful to record that its final action ratifying the Constitution by a vote of fifty-seven to forty-six was taken at one o'clock on Saturday, June 21, 1788. The vote made sure a new Federal Constitution.<sup>1</sup> New Hampshire's representatives had been the first to sign the Articles of Confederation ten years before. The ratification conventions in New York and Virginia, where the issue was also in doubt, were in session at the time of the second convention in New Hampshire. Hamilton and Madison had arranged for a messenger to convey to New York and Virginia the results of the New Hampshire Convention, who hurriedly galloped away to carry the good news to the New York Convention in session at Poughkeepsie. The news was announced on the floor of the New York Convention at a psychological moment by Robert R. Livingston, one of Hamilton's followers, and was largely influential in inducing the New York Convention also to ratify the Constitution. From Poughkeepsie, Hamilton sent another messenger south, who met Madison's messenger with the news of Virginia's ratification at Alexandria, Virginia, which thereby became

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<sup>1</sup> New Hampshire approved the amendments previously adopted in Massachusetts.



the first place to know of and celebrate the coming into being of the United States of America as we know them today.

Ben West and John Pickering were also chosen to represent New Hampshire but did not go to Philadelphia. The name of Ben West is an obscure one, but John Pickering became a United States District Judge. He was impeached and removed from office on March 12, 1804, having unsuccessfully pleaded insanity as a defense. Pickering was the first of seven United States Judges so tried and one of the three who were convicted. The impeachment of Pickering was one of a total of twelve impeachment trials in the entire history of the Senate which included one President, Andrew Johnson; one United States Senator, Blount, of Tennessee; one member of the Supreme Court of the United States, Samuel Chase, and one cabinet officer, Wm. W. Belknap, Secretary of War in the cabinet of President Grant, all of whom were acquitted. There were three other convictions besides that of Pickering, one of them being Wm. W. West, a United States District Judge in Tennessee, another was Robert W. Archbold, an associate member of the United States Commerce Court. The third was Halsted L. Ritter, a District Judge in Florida, convicted in 1936.

In 1791 New Hampshire and New York withdrew their objections to Vermont's becoming a part of the Union and it was admitted as a state. Vermont, which had originally been formed from parts of New York and New Hampshire, had existed as an independent republic since the Revolutionary War, because of the hostility to it, in the Continental Congress, of the two states out of whose territories it had been formed, and hence the unwillingness of the Congress to recognize it as a state.

#### JOHN LANGDON

John Langdon was the great man of New Hampshire when he was chosen on June 27th, more than a month after the Constitutional Convention opened, to represent that state at Philadelphia. He and his colleague, Nicholas Gilman, were serving in the Continental Congress at that time and only had to travel from New York to Philadelphia to attend the Convention.

Like Gilman, he was a native of New Hampshire, that state

and Virginia being the only ones represented at Philadelphia entirely by native sons. Langdon was born at Portsmouth on June 25, 1741, where he lived all his life and was buried.

The original members of the Langdon family had come to America from England in 1687, there belonging to the Cromwell faction in English politics. Langdon only attended grammar school as a boy and was a man of business rather than books.

He was one of the rich men of the Constitutional Convention. He belonged to a shipbuilding family at Portsmouth. When a young man he served as a sea captain, went to London on several occasions, and was a man of many travels. When the Revolution came on he, in 1775, built the first vessels used for a Continental navy. They were wooden sail vessels, crude and crampy, but under the direction of John Blair, the first head of our navy, were of much service. John Paul Jones' ship, the *Ranger*, was built by him.

Like Robert Morris, Langdon shared the fortune he made in helping the government which had enriched him. When the war raged hottest, he used his own funds to equip Stark's brigade. He advanced his money at more than one critical period, and took part in the battles of Bennington and Saratoga.

New Hampshire sent Langdon to Philadelphia as a delegate to the second session of the Continental Congress when it met there on May 10, 1775, and again in 1776 when he resigned before the Declaration of Independence was signed and returned to Portsmouth where, under the title of Navy Agent, he built ships for the new government. He was a fine example of action versus words in a time of crisis.

He had a flair for politics though an astute business man. In 1776 and 1777 he served as judge of the Court of Common Pleas of New Hampshire. From 1777 to 1782 he was a member of the House of Representatives of that state and speaker during that entire period. In 1783 he was again a member of the Continental Congress. Then came his service as a state senator in 1784 and 1785 when he was the presiding officer of that body. One of his associates in the state senate was Ezekiel Webster, the farmer politician, father of Daniel Webster. Just as did John Rutledge in

South Carolina, John Langdon served first as president of New Hampshire and later held the title of governor.

It is said that he not only paid his own expenses at Philadelphia but those of his colleague, Gilman, as well. He took no important part in the proceedings of the Convention. It had acted upon its most controversial subjects when Langdon and Gilman arrived on July 23rd, fifty-nine days after the Convention opened.

In the fight for ratification, Langdon used the full weight of his influence, which was great, to secure the approval of New Hampshire. He was an active leader in the two conventions held in that state. As a result New Hampshire, despite the postponement of its first convention, became the ninth and final state necessary to make the Constitution operative.

When New Hampshire chose its first United States Senators, Langdon was one of those elected. He drew the short term of two years, and he did not serve again thereafter. He was the first President pro tem of the United States Senate, a position he held from April 6, 1789, until September 29th of that year, when Congress adjourned. As such he would have become President after the death or removal of both President and Vice-President, a line of succession which existed for nearly one hundred years.<sup>2</sup>

After his brief service as a United States Senator, Langdon returned to his beloved New Hampshire, and devoted the rest of his life to his home people. In 1801 he was a member of the New Hampshire House of Representatives where he served four years, during two of which he was again the popular and capable Speaker. His ambition to be governor again was gratified in 1805 after four successive defeats. So great was his popularity and success as governor that the people re-elected him three successive times from 1806 to 1808. Then again came defeat in 1809, which was followed by a return to office for the year of 1810-1811.

He broke with Washington and became a rabid anti-Federalist before the latter went out of office, and became an enthusiastic fol-

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<sup>2</sup> After the death of Thomas A. Hendricks, of Indiana, Vice-President under Grover Cleveland during his first term as President, Congress, by statute, fixed the present line of succession, which begins and ends with the President's cabinet.

lower of Jefferson and his politics, though in later years he declined Jefferson's offer to make him Secretary of the Navy at a time when Jefferson was neglecting to build up the navy which Langdon had begun twenty-five years before. When Madison was chosen to succeed himself in the campaign of 1812 by a vote of sixty-four out of eighty-two votes in the caucus held in Congress, Langdon received an equal number of votes as his running mate but declined to accept the honor, which was then conferred on his fellow delegate at Philadelphia and New England neighbor governor, Elbridge Gerry.

Unlike that of so many of his wealthy associates at Philadelphia, Langdon's wealth did not forsake him in his old age, and he enjoyed a retirement of peace, security, and great popularity. He had a winning personality. He was a tall handsome man of great geniality of manner, who made and kept friends easily. His biographers described him as a statesman of pure life worthy to be honored, trusted, and revered. He was not a great mind, but a man of fine soul and patriotic nature, who served well his day and generation. Like his colleague at Philadelphia, Nicholas Gilman, John Langdon had a brother, Woodbury Langdon, whose fame as a statesman in many ways equaled his own. George Washington took pleasure, though they did not see alike politically, in being his guest when he traveled to Portsmouth on his New England visit while President. His mansion in Portsmouth, where Washington was entertained, was a shrine in 1936.

Langdon had only one child, a daughter who married in the Mense family in Philadelphia, from whom all of the Langdon heirs went forth. His grandson, John Langdon Elwyn, was a famous minister of his day.

He died at Portsmouth September 18, 1819. He had become a religious convert and was a devout churchman. He was buried in the old North Cemetery at Portsmouth. In his last days he was a paralytic, and devoted his time to discussions of politics and the consolations of religion.

#### *NICHOLAS GILMAN*

Nicholas Gilman, one of the two New Hampshire delegates who attended the Constitutional Convention, was a native of Exeter, in

Rockingham County of that state, where he was born August 3, 1755, and where he was buried when he died on May 2, 1814.

He has been erroneously named by many writers as the youngest signer of the Constitution. He was thirty-two years of age at the time and the senior of many of his fellow delegates, including the great Hamilton.

The family was one of prominence and wealth, and Nicholas Gilman, like Robert Morris, had a counting-house for his college. He served in the military forces during the Revolutionary War, though he never held any higher military rank than adjutant. After the War he was active in the Society of the Cincinnati.

Young Gilman had his first experience in public service as a member of the Continental Congress, in which he served from 1786 to 1788. He went direct from the Congress at New York to Philadelphia, but he and Langdon, his colleague, did not reach the Convention floor until after many of the major issues had been settled. While there he took no active part in the work of the Convention; later he was one of the signers of the Constitution who profited from the increased value of public securities which resulted from the new government he had helped to establish.

When New Hampshire chose its first Federal Congressmen, Gilman was elected and served without distinction for eight years. There is a tradition that his one address on the floor of Congress concerned a rural post-office. He was a staunch Federalist, and served as a Presidential Elector in 1792 and 1796.

After being out of Congress for eight years while he held local office in New Hampshire, Nicholas Gilman was sworn in as a United States Senator on March 3, 1805, at the same time Jefferson began his second term as President. But it had now been sixteen years since Washington had become President, and the originally dominant Federalist party was declining yearly in influence. Nevertheless he continued to be a staunch Federalist, and when he died in Philadelphia, as one of the last signers of the Constitution to serve in Congress, he was one of the small group of the once dominant Federalist party left in that body.

Unlike many of his colleagues at Philadelphia, Nicholas Gilman was eclipsed by other members of his family. A brother, John

Taylor Gilman, was also a Continental Congressman, and in addition an acceptable governor of New Hampshire. He gave the first funds for the endowment of the Phillips Exeter Academy, served for thirty-two years as president of its Board of Trustees, and also as a trustee of Dartmouth College, the alma mater of Daniel Webster.

A nephew of Nicholas and John Taylor Gilman, Charles Jervis Gilman, was a Congressman from Maine in 1857.

## VII

### RHODE ISLAND AND THE CONSTITUTION

**R**HODE ISLAND, the least of the states in territory and greatest in population per square mile, had no part in the making of the Constitution, and only ratified it and became a part of the Union when economic pressure drove it to do so or be shut off from the other states by unscalable tariff walls.

It had come into existence largely as a result of religious and economic oppression elsewhere. Roger Williams, its Baptist founder exiled by the Massachusetts Bay Colony in 1636, was an individualist, and his colonists were in time to follow his footsteps and go their way alone. Its leaders, since it had achieved independence from England, held aloof from any effort toward a national government, and Rhode Island had not been represented in the Continental Congress for some time before the convention met which wrote the Constitution.

Conditions there at that time were intolerable, and no state in the Union was more in need of regulatory measures to correct its financial frenzies and remedy its twisted business morale.

In no state had the paper money craze gone farther than there. "Hard" money was extremely scarce throughout the states. Notes of all sorts signed by all sorts of persons were the only medium of payment, while the notorious currency put out by the Continental Congress to finance the war less than ten years before was selling at discounts making it worth only a few cents on the dollar. To meet the clamors of the debtor class, the Rhode Island legislature had enacted laws declaring it a crime for any business man to refuse to accept any of the "wildcat" money then current in payment of goods sold, and a number of business men were actually indicted, convicted, and sent to jail for failure to comply with the laws.

But the Rhode Island port cities were satisfied with things as they were. The state had refused a few years before to support an

amendment to the Articles of Confederation which would have permitted a national tariff act after all the other states had agreed to it. The port cities were waxing rich from the heavy imports they were bringing into the country and the heavy duties they were able to collect from the shipping of the other states, and they had no desire to surrender their lucrative perquisite to a new national government whose avowed purpose would be to take the regulation of interstate and foreign commerce unto itself. The feelings of the other states for their smallest neighbor were not enhanced by such selfish provincialism, and the commonest appellation for the little state outside its own boundaries was "Rogue's Island."

However, while the government in charge of Rhode Island did not encourage delegates to be chosen to represent it at Philadelphia, there were eminent citizens of that state living in Providence who wanted the world to know that at least a portion of the state's population was interested in the Convention about to be opened. A communication, representing both merchants and tradesmen, was delivered to the Philadelphia Convention by James M. Varnum, a leading Rhode Island citizen and a future judge of the Northwest Territory, and read to the Convention by Gouverneur Morris. The letter was as follows:

"Providence, May 11, 1787.

"Gentlemen:

"Since the legislature of this state have finally declined sending delegates to meet you in Convention, for the purposes mentioned in the resolve of Congress of the 21st February, 1787, the merchants, tradesmen, and others, of this place deeply affected with the evils of the present unhappy times, have thought proper to communicate in writing their approbation of your meeting, and their regret that it will fall short of a complete representation of the Federal Union.

"The failure of this state was owing to the non-concurrence of the upper House of Assembly with a vote passed in the lower House, for appointing delegates to attend the said Convention, at their session held at Newport, on the first Wednesday of the present month.

"It is the general opinion here, and, we believe, of the well-informed throughout this state, that full power for the regulation



of the commerce of the United States, both foreign and domestic, ought to be vested in the national council, and that effectual arrangements should also be made for giving operation to the present powers of Congress in their requisitions for national purposes.

"As the object of this letter is chiefly to prevent any impression unfavorable to the commercial interest of the state from taking place in our sister states, from the circumstance of our being unrepresented in the present national Convention, we shall not presume to enter into any detail of the objects we hope your deliberations will embrace and provide for, being convinced they will be such as have a tendency to strengthen the union, promote the commerce, increase the power, and establish the credit of the United States.

"The result of your deliberations, tending to these desirable purposes, we still hope may finally be approved and adopted by this state, for which we pledge our influence and best exertions.

"This will be delivered you by the Hon. James M. Varnum, Esq., who will communicate (with your permission) in person, more particularly, our sentiments on the subject matter of our address.

"In behalf of the merchants, tradesmen, etc., we have the honor, etc., etc. . . .

"John Brown,  
"Joseph Nightingale,  
"Levi Hall,  
"Philip Allen  
"Paul Allen,  
"Jabez Bowen,  
"Thomas Lloyd Halsey,

"John Jinkes,  
"Welcome Arnold,  
"William Russell,  
"Jeremiah Olney,  
"William Barton,  
"Nicholas Brown,

"Committee.

"Honorable Chairman of the General Convention, Philadelphia."

Welcome Arnold, whose name is subscribed to the communication, was a member of a distinguished Rhode Island family. Benedict Arnold, who rose to the heights and fell to the depths, a native of Rhode Island, was the fourth member of his family who bore the name of Benedict.

When the question of ratifying the Constitution arose, Rhode Island at first did not call a convention of delegates of the people for the purpose as did all the other states. Instead it arranged for a

state-wide referendum, which was held on April 30, 1788, exactly one year before Washington became President. Its vote was 2,708 against ratification and 232 for approving the Constitution, a victory of more than twelve to one in favor of the enemies of the new government. The local feeling was so strong that when nine and more states had ratified the Constitution and the rest of the country was celebrating the victory won, the friends of the Constitution in Rhode Island were not allowed to join in the nation-wide rejoicing without suffering indignities at the hands of its enemies.

On April 30, 1789, Washington was inaugurated President of the new United States. All the other states except North Carolina had already chosen or sent their senators and representatives to represent them at New York, but Rhode Island continued to hold aloof and pursue its course apart from the new government. But the increasing evidence of its economic isolation eventually caused a change of sentiment in the state. The new Federal Government quickly became stronger, and in the spring of 1790, less than one year after Washington began his service as President, it threatened to treat Rhode Island practically as a foreign nation, and to enact tariffs about her which would in practice have ruined her shipping to the other states. Rhode Island business interests now saw the light, and delegates were at last chosen to meet in convention and consider ratification. After sixty days of bitter discussion the convention, presided over by Daniel Owen, ratified the Constitution on May 29, 1790, though by a bare majority of only two votes. Even so, the victory was only obtained after it was agreed that near a score of amendments to the Constitution would be offered to the Congress. These amendments were never acted on, however, for in less than thirty days the Rhode Island legislature approved the Madison amendments to the Constitution, which were then before the several states and were shortly to become a part of the Constitution.

Rhode Island's attitude was in striking contrast to that of Delaware, the next smallest state of the Union, whose ratification convention was the first of all the states to ratify the Constitution, and which did so by a unanimous vote.

Rhode Island is also memorable in American constitutional his-

tory as the last state to discard its Royal Charter. It did not do so until during the administration of President John Tyler, when the Dorr rebellion forced a change in the then intolerable political institutions of the state, which had been perpetuated under its antiquated form of government.

## VIII

### NEW YORK AND THE CONSTITUTION

**P**RESENT day citizens of New York cannot look with any great degree of pride upon the part played by its leaders in the making of the Constitution. Its attitude at this time was not novel, for it was several weeks after the Declaration of Independence was signed by the delegates from the other states before the New York delegates signed it.

New York at that time had a limited population and was classified as one of the small states; Virginia, Massachusetts, and Pennsylvania being the big three. Philadelphia had more people than New York City, and the leaders in New York were not then recognized as national leaders as they are today.

The city of New York, however, was already on the way to what it was to become, and the lines were sharply drawn between it and up-state New York. The issue was one of the metropolitan versus the rural districts. George Clinton was the leader of the up-state forces, and for the moment in the saddle (he was the state's governor from 1777 to 1795, and again from 1801 to 1804). Hamilton, the spokesman for the business men of the city, was to carry the day on the issue of the Constitution, though by the narrowest margin.

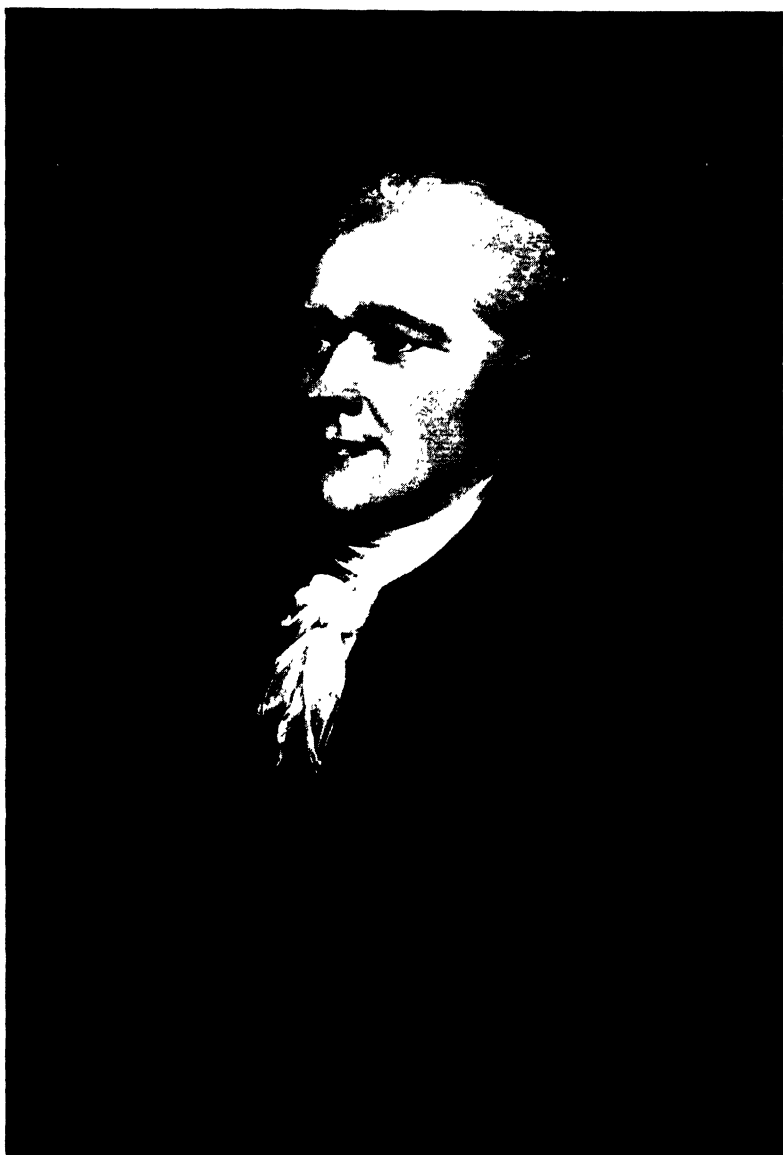
George Clinton ruled almost as a dictator, and opposed any plan for the nation which would take away from him any of the great power he exercised as governor. The port of New York was growing rapidly and the state looked with a jealous eye upon any plan which would take away from it the revenue which was being received in ever increasing amounts from the city's growing commerce. For this reason New York had voted on February 18, 1787, against the last great effort on the part of the Continental Congress to enact revenue laws which would have helped provide for the debts of the government then in existence. Hamilton had led the fight for the revenue measure and lost. It must in justice be said, however, that

the burden of a national government already rested largely upon New York and Pennsylvania because of the failure of some states to make any contribution, and of several to pay only part of the requisitions made upon them.

It is difficult for the reader to think of New York as a state in which the doctrine of states' rights was then in the ascendancy. Such, however, was the case at the time of the making of the Constitution. Though Hamilton made a great effort to arouse the people to the need of changing the Articles of Confederation, he was consistently opposed by Clinton and the political groups associated with him. As a result, when the delegates were chosen to represent New York at Philadelphia, two of the three delegates, Robert Yates and John Lansing, belonged to the Clinton faction, and it was a great tribute to Hamilton's masterful leadership and over-towering ability that he was chosen at all. He was the first of all Americans to suggest changes in the Articles of Confederation and had consistently worked to that end for many years prior to the meeting of the convention. In a letter dated September 3, 1780, to James Duane several months before the final ratification of the Articles of Confederation, Hamilton, then only twenty-three years of age, had suggested the calling of a convention to correct the errors of the then unratified Articles of Confederation, the Constitution of that day. He was also one of the two delegates from New York at the Annapolis conference one year before the Constitution was drafted and had there written the resolution which resulted in the Constitutional Convention.

For a great portion of the time of the Convention, New York had no representative present. Yates and Lansing, who controlled the vote of that state, left Philadelphia on July 5th and did not return, and continued their opposition to a new Constitution after their return to New York. They assembled to organize the Association of Federal Republicans to help defeat ratification in Virginia, North Carolina and New Hampshire and other doubtful states, Richard Henry Lee and William Grayson being their confederates in Virginia. Fortunately the association had made but little headway before enough states had ratified the Constitution to make it effective.

Hamilton had left the Philadelphia Convention a few days before



*Alexander Hamilton*



Lansing and Yates, knowing how futile would be any effort on his part to influence the Convention where two of the three delegates from New York were opposed to his political ideals and would out-vote him on all fundamental issues. He returned to Philadelphia on August 13th, and at the end, served on the committee of style and revision, which finally prepared the Constitution for signature, but he had no vote on the Convention floor to the last day. The plan he had offered for a constitution was not only not acceptable, but was not seriously considered when presented.

When the Constitution was submitted to Congress by the Convention, through the influence of Clinton and his followers, sentiment in New York State was overwhelmingly against ratification, and it is said that forty-six of the sixty-five delegates, who met in the old Court House at Poughkeepsie on June 17, 1788, to consider the question, were opposed thereto. It was due only to the inspired logic and brilliant leadership of Alexander Hamilton that the final vote on July 26th was thirty-one to twenty-nine in favor of ratification. Even so, it was not until Robert R. Livingston, the chancellor of New York, arose and announced the news of ratification by New Hampshire, the required ninth state to make the Constitution operative, that the opposition began to fall in line. Livingston, who had attended the Stamp Act Congress of 1765 and was to achieve further fame in national affairs, was an active supporter of Hamilton at that time, though he became an anti-Federalist early in the administration of George Washington.

After Livingston had resigned the Office of Foreign Secretary under the Articles of Confederation, John Jay occupied that position until March 21, 1790, when the Federal Government created by the Constitution had been established, and Jefferson, his successor, had returned from France, at which time Jay became the first Chief Justice. He was in Philadelphia when the Constitution was being drafted but was not a delegate.

It is said that no votes are changed by a speech or speeches. But the exception proved the rule in the case of Hamilton's final address before the New York ratification convention. One of the leaders of the opposition, Melancthon Smith, of Dutchess County, after listening to Hamilton's brilliant exposition of the Constitu-



tion, frankly conceded the correctness of its logic and joined with those who voted for ratification. Hamilton had intimated that New York City and its environs would plan for a state of their own should the convention fail to ratify the Constitution. Smith, as a member of the Continental Congress, had vigorously opposed submission to the states of the proposed Constitution when the question was debated on the floor of that body. Among those who voted for ratification was Isaac Roosevelt, ancestor of two Presidents, Theodore and Franklin D. Roosevelt.

It has erroneously been said that the ratification by New York was a conditional ratification. When the question of ratification came upon the New York Convention floor, a letter was sent to James Madison in which he was asked the direct question whether a state could withdraw later from the Union if it so desired. Madison had replied promptly that there was no such thing as conditional ratification, that a state must either approve or disapprove the Constitution. When the New York ratification resolution was presented, it simply included a clause to the effect that the Constitution had been ratified "in full confidence" that vital amendments would be made to it in the future, though the vote by which it was agreed to change the words "on condition" to "in full confidence" was close: thirty-one to twenty-nine. John Lansing, who had fought Hamilton every step of the way, then introduced an amendment providing for secession on the part of New York if certain amendments were not adopted, but that amendment was rejected.

The Clinton group in New York, after being routed by Hamilton by so narrow a margin, was not content to surrender. Plans were immediately made for a second convention, to amend the Constitution soon to become effective. An address was sent to all the states by Clinton, who had been the president of the New York Convention. It was as follows:

"Sir:

"We, the members of the Convention of this state, have deliberately and maturely considered the Constitution proposed for the United States. Several articles in it appear so exceptionable to a majority of us, that nothing but the fullest confidence of obtaining

a revision of them by a general convention, and an invincible reluctance to separating from our sister states, could have prevailed upon a sufficient number to ratify it, without stipulating for previous amendments. We all unite in opinion, that such a revision will be necessary to recommend it to the approbation and support of a numerous body of our constituents.

"We observe that amendments have been proposed and are anxiously desired, by several of the states, as well as by this; and we think it of great importance that effectual measures be immediately taken for calling a convention, to meet at a period not far remote; for we are convinced that the apprehensions and discontents, which those articles occasion, cannot be removed or allayed, unless an act to provide for it be among the first that shall be passed by the new Congress.

"As it is essential that an application for the purpose should be made to them by two-thirds of the states, we earnestly exhort and request the legislature of your state to take the earliest opportunity of making it. We are persuaded that a similar one will be made by your legislature at their next session; and we ardently wish and desire that the other states may concur in adopting and promoting the measure.

"It cannot be necessary to observe, that no government, however constructed, can operate well, unless it possesses the confidence and good-will of the body of the people; and as we desire nothing more than that the amendments proposed by this or other states be submitted to the consideration and decision of a general convention, we flatter ourselves that motives of mutual affection and conciliation will conspire with the obvious dictates of sound policy to induce even such of the states as may be content with every article in the Constitution to gratify the reasonable desires of that numerous class of American citizens who are anxious to obtain amendments of some of them.

"Our amendments will manifest that none of them originated in local views, as they are such as, if acceded to, must equally affect every state in the Union. Our attachment to our sister states, and the confidence we repose in them, cannot be more forcibly demonstrated than by acceding to a government which many of us think very imperfect, and devolving the power of determining whether that government shall be rendered perpetual in its present form,

or altered agreeably to our wishes, and a minority of the states with whom we unite.

"We request the favor of your excellency to lay this letter before the legislature of your state; and we are persuaded that your regard for our national harmony and good government will induce you to promote a measure which we are unanimous in thinking very conducive to those interesting objects.

"We have the honor to be, with the highest respect, your excellency's most obedient servants.

"By the unanimous order of the Convention.

"GEORGE CLINTON,  
"President."

Randolph, of Virginia, had fought for such a course at Philadelphia. In Virginia, Patrick Henry and his followers, who had fought ratification, joined in the plan of Clinton, but the proposal failed to arouse much interest when it was generally understood that the first Congress would of its own initiative submit such amendments to the states.

The influence of Clinton, however, was such that no provision was made in New York State for choosing electors for the first electoral college, which elected Washington as President, and in the election of 1792, when Washington was re-elected, the electoral vote of that state was cast for Clinton, who received in all fifty electoral votes.

Likewise, New York was not represented in the first Federal Senate because of the bitter factional fight in the New York Assembly over the election of Senators.

It was nevertheless the good fortune of Clinton, who was largely responsible for the anti-Constitutional propaganda in New York, to die as Vice-President of the United States. He was Vice-President under Jefferson from March 4, 1805, to March 4, 1809. He was placed on the ticket with Madison in the campaign of 1808 when an old and all but worn out man, and died on April 20, 1812, while holding that office, although not a success as its presiding officer. He was in his dotage, his mind wandered and many parliamentary errors were made. He was first buried in the Congressional Cemetery at Washington; later his body was taken back

to Kingston, New York, his native town, where it now rests in the Dutch Reformed cemetery. A son and namesake of George Clinton served as a New York Congressman when his father was Vice-President.

As a final irony, when New York selected two figures to represent that state in Statuary Hall in the Capitol at Washington, the figure in stone of George Clinton was one, the other that of General Philip Schuyler, one of the first two United States Senators from New York and the father-in-law of Alexander Hamilton, whose sagacious leadership overcame the redoubtable Clinton and carried the vote of New York in its memorable fight over ratification.

As for Hamilton, New York City gave him a reception equal to that due a returning hero of war. When that city celebrated the signing of the Constitution, all classes of society marched in the mammoth parade of 5,000 people, a large group for that time. Banners bearing aloft the name of Hamilton waved to the wind as the model ship, bearing the name "Hamilton," was drawn through the streets. Fame blew her trumpet as a wreath of triumph was placed upon his brow. Hamilton was the hero of the hour.

#### *ALEXANDER HAMILTON*

The part played by Alexander Hamilton in the making of the Constitution has not been made clear by many historians. There are many reasons for this, for he did his greatest work in promoting the idea of a Constitution before the Convention met, and after its adjournment, in explaining the provisions of the Constitution to the American people. No one contributed more to its ratification than he, despite the fact that he did not entirely approve of all that had been done at Philadelphia, for in keeping with a great feature of his character, he could sink his own individual views when a choice had to be made between achieving a great end on the one hand, and joining with the enemies of progress on the other. But his contributions on the floor of the Convention itself were, relatively, of secondary importance.

Hamilton was not a native American and had no blood relatives in America. Perhaps for this reason he had none of the narrow state pride of many of his contemporaries and was more of a nation-

alist than most of his political associates. In fact, it may be said he had the large view-point of an Englishman of the Empire rather than that of a petty provincial or colonial, a point of view which he never failed to display during his entire life in America.

He was born on the Isle of Nevis, a small British island in the West Indies located near Porto Rico, on January 11, 1757. His mother, whose maiden name was Rachel Fawcett, of excellent and well-to-do French Huguenot stock, a woman of great intellect and personal charm, early in life married a wealthy Dane by the name of Levine. The marriage was not a happy one, a separation followed, a divorce decree was not granted, and the disillusioned young bride, who had married only to please her mother, returned home broken-hearted. After a period of seclusion, she met and fell in love with a Scotchman of charm, education, and distinguished ancestry, who was related to the most prominent family on the island and who had recently arrived in Nevis and bore the name of James Hamilton. It was said to have been a love match and their relationship was publicly accepted in the community in which they lived, but because of the legal complications involved they could not be married. Out of that union came the great genius known in American history as Alexander Hamilton.

James Hamilton had inherited a good estate which he lost in a few years by bad management. For a time he was employed by his more prosperous brother-in-law on St. Croix Island. Finally he went away to find employment elsewhere and never saw wife nor child again. The mother died two years later when the son was a lad of eleven years, and the boy's next few years were spent with relatives of his mother.

When only twelve years of age young Hamilton, who had been dubbed "Aleck," got a position in a store and counting-house. His managerial capacity was so great that in two years' time he was put in charge of a thriving business.

It is said that "'Tis an ill wind that blows nobody good," but as for Hamilton it was one of the periodic storms of the Caribbean which put in motion the series of events that sent him to America. During his fifteenth year he lived through one such cyclone, and a

few days later described it so vividly for Hugh Knox, his kindly tutor and friend, that Knox urged him to put it in writing for the newspaper of an adjoining island. The story interested the governor of the island, and at the urging of Knox and the governor, well-to-do relatives of Hamilton on his mother's side raised funds to complete the education of the brilliant and precocious youth.

Hugh Knox, who had from the first exercised a great influence over young "Aleck," himself had attended school at Newark, N. J., under the senior Aaron Burr, and it was decided to send the bold and undersized lad to the mainland at once. And so, armed with a letter of introduction from Knox to William Livingston, a great New Yorker who lived in Elizabethtown, N. J., and Knox's parting admonition to keep his temper and never be ashamed of his parentage, young Hamilton set sail for Boston.

On his arrival at Boston, he listened with much interest to James Otis and others who were agitating the war which soon followed. From Boston he went directly to New York where he was taken under the wing of William Livingston. It was the same William Livingston who a few years later was chosen as the first governor of New Jersey.

While living at Elizabethtown, in Livingston's mansion called "Liberty Hall," young Hamilton was prepared for college at the Academy located upon the spot where the Manse of the First Presbyterian Church of Elizabethtown now stands. One of his classmates there was another lad of equal genius, Aaron Burr. Each was endowed with rare gifts, great personal charm, and magnetism which won instant admiration from all who knew them. There is a tradition in Elizabethtown that even then there was keen rivalry between them. The two great minds thus clashed in ambitious rivalry from the very beginning of their relationship, which was to terminate so tragically many years later.

The father of young Aaron Burr had married the daughter of Jonathan Edwards, of New England, a woman who was much younger than her learned husband. Both parents died of smallpox when their son was a small lad, and he and his younger sister found a home with a maternal uncle in Elizabethtown. One of their tutors was Tapping Reeve, who was to marry the younger sis-

ter of Burr, and later establish a private law school at Litchfield, Connecticut, to which many young but ambitious future American statesmen journeyed to learn the commentaries of Blackstone. One of them was John C. Calhoun, a Yale graduate, who before his death served as a member of both Houses of Congress, as a cabinet officer in the cabinets of two different Presidents, twice as Vice-President, and also as the moving spirit behind the ill-fated nullification plans of his native South Carolina, out of which came the secession movement which resulted in the war of the sixties.

Hamilton first planned to attend the College of New Jersey, now Princeton University, founded by Aaron Burr's father. But when the dons of that institution refused to agree to advance Hamilton as rapidly as he thought he ought to be and as quickly as he had mastered a subject, he went to King's College, now Columbia University, in New York, where he enrolled to take an even dozen subjects.

The revolution was on, and New York was the center of both Tory and Whig influence. Many of its old and leading families were frankly out of sympathy with the revolutionary movement, while the streets echoed with the cheers of the revolutionists. Hamilton, under an assumed name, wrote articles for the New York press so brilliantly conceived that it was difficult for those who read them to believe they came from the pen of a young college student of seventeen. Dr. Myles Cooper, President of King's, was a Tory and author of some of the articles answered by young Hamilton. William Livingston and John Jay were thought to be their authors. Then as now crowds gathered at City Hall Park, known as The Fields, and listened to agitators who harangued the restless groups, and Hamilton, gifted in voice as well as with the pen, was soon practicing his talents there also, demonstrating a remarkable grasp of the issues which were rapidly dividing the people of that growing city.

With this beginning, it was only natural that Hamilton should enter military service. He was only nineteen years of age and was soon given the rank of Captain of Artillery. He saw service at Trenton, Brandywine, and Princeton, in New Jersey, and after one year of military life, in 1777 George Washington invited him to serve on

his staff with the rank of Colonel. Washington was at that time virtually a dictator, and he drew around him the ablest and best minds at his command. Young Hamilton was recognized at once as the first of Washington's "brain trust." He knew French, which was a great help to Washington in his dealings with the French officers who were soon to come to his rescue in saving America. A strong attachment arose between the two. Each found much to admire in the character and ability of the other, and an enduring friendship began which ended only with the death of Washington.

After four years in Washington's service, Hamilton decided to serve elsewhere and became a colonel of New York troops. As such he was at Yorktown and witnessed the historic surrender of Cornwallis at the head of the last English force on American soil.

When the war was over, he returned to New York and entered actively upon his professional and business career.

He married Eliza Schuyler, the daughter of Philip Schuyler, one of the generals of the Revolution, a member of one of the wealthy Dutch families of Albany, New York. After only four months' study he had been admitted to the bar of New York, where he was recognized at once as a great legal mind. As a result of his wife's family wealth and influence, his fine record as a soldier, and legal talents of an unusual order, he could look forward to a brilliant future.

Hamilton's next public service was as a member of the rapidly decaying Continental Congress. Its membership by this time was largely in the hands of mediocre men, for after the war the first minds in most of the states preferred to serve in state positions, and the young, energetic and ambitious Hamilton found little satisfaction in his public duties. He tried unsuccessfully to collaborate with Madison and Oliver Ellsworth in effecting changes in the Articles of Confederation to permit the national government to collect taxes on imports, but a unanimous vote of the states was necessary to amend the Articles, and Rhode Island voted against it. He was only twenty-five years of age.

When New York accepted the invitation of Virginia and Maryland to send delegates to the Annapolis conference, Hamilton and Egbert Benson, a New York judge, were chosen. It was the mind



of Hamilton which framed, and his hand which wrote the message sent out from that conference calling for the Philadelphia Convention.

Upon completion of the plans for the Convention, Hamilton was chosen by the New York Legislature of which he was a prominent member, as one of the three delegates to represent that state. The choice of Hamilton was a great tribute to his towering ability, for the other two delegates chosen, Yates and Lansing, belonged to the Clinton faction, which absolutely controlled New York State politics.

The part played by Hamilton in the actual making of the Constitution was less conspicuous than that of others at Philadelphia. The other two delegates from his state opposed all his political views, and he was outvoted on most questions. However, he entered actively into the debates, was often consulted, and he did present to the Convention, in an informal way, his plan for a constitution, the full text of which is given at the end of this sketch. But he knew that it would not be favorably received, for he boldly advocated a centralized government modeled after that of the British and too monarchistic to meet with much favor. He advocated the election of the President as well as United States Senators to serve during good behavior, and expressed his own belief that even governors of the states should be appointed by the President.

He attended the convention only sixty-nine out of the one hundred and fourteen days in which it was in session, for he left Philadelphia on June 29th and came back August 13th, forty-five days later. His most conspicuous official service was as a member of the committee on style and revision. When it came time to sign, Hamilton gallantly wrote the names of the states at the bottom of the Constitution, and invited the delegates from each of them to come forward one by one and affix their names to it. Though his name appears as the one signer from New York, he had no authority to commit his state thereto, since under the rules of the Convention and his own credentials not less than two delegates from each state were necessary for this purpose. Many historians have erroneously stated that there is no name from New York signed to the Constitution. This is an error, for Hamilton boldly signed under the name of that State, for though the document

did not meet with his whole-hearted approval, he favored a sound constitutional government and felt that this was the best that could be had under the circumstances.

Alexander Hamilton rose to his greatest heights as a profound student of government and as a patriot worthy of emulation in the great struggle for ratification of the Constitution. When the Convention was over he returned to New York and through his voice and pen became one of its really great champions. He wrote fifty-one of the eighty-five papers embraced in the volume now known as "The Federalist," a collection of profound argumentative essays which dealt with the fundamentals of good government. Madison was the author of twenty-nine of the other essays, and John Jay, at that time Secretary of Foreign Affairs, was the author of the remaining five. It was due almost solely to his unceasing activity and leadership that New York ratified the Constitution.

Washington first named Robert Morris, of Philadelphia, who had served for more than three years as Commissioner of Finance for the colonies, as Secretary of the Treasury. But Morris declined and suggested the name of Hamilton. Hamilton accepted, and his labors as Secretary of the Treasury were so outstanding that no greater compliment has since been paid his successors than to classify them as worthy successors of Alexander Hamilton. When he took charge of the nation's finances he had to build its financial structure from the ground up. His bold plan for the new Federal Government to assume the debts of the states and to refund at par all the accumulated debts of the Continental Congress, ultimately won for him the perpetual gratitude of all good Americans. One of the means of achieving his result was the deal between Jefferson and Hamilton whereby Jefferson persuaded Bland and White, two rebellious Virginia congressmen, to give Hamilton the majority he needed in the House of Representatives for his refunding plan in exchange for Hamilton's influence in having the permanent capital of the United States located on the Potomac at the point now known as the City of Washington, although Jefferson later in life expressed regret for that choice.

But though the wealth of the nation was increased over night by more than forty millions of dollars as a result of Hamilton's

financial plan, he himself was compelled to leave the cabinet and return to New York in order to re-coup his personal financial fortune, which as a result of his long and disinterested public service is said at this time to have been less than five hundred dollars.

After leaving public office, the relations between Hamilton and Washington, his old chief and mentor, continued to be as intimate as ever. In 1796, when Washington was to deliver his Farewell Address after eight years in the Presidency, he delegated the task of writing the speech to Hamilton. He accepted the task with the greatest pleasure, though it is notable that in preparing it he drew largely upon one written four years before by Madison, at a time when Washington had seriously deliberated the possibility of declining the Presidency for a second term. The warm personal relationship continued between them until Washington's death, in striking contrast to the once warm relationship between Washington and Madison, for the last letter written by Washington the night before he passed away was a friendly note to Hamilton, and on the same day he had spoken with asperity of Madison.

So great was the influence of Hamilton after leaving office, that the cabinet of John Adams, whose members had constituted the old cabinet of Washington, looked to him rather than to Adams for advice, a thing which hastened the final breach between the Adams and Hamilton factions in the Federalist Party and that party's death, for Adams, the nominal head of the party, did not succumb as readily to Hamilton's intellectual leading-strings as did the great Washington. The division became more acute when Hamilton urged Adams to declare war against France in 1798. Talented as a leader in peace time activities, he also had a great passion for military glory, and was chosen to lead Washington's staff when Adams named Washington the nominal head of the American Army for the period of such a war. Hamilton thus became the acting head of the army with the rank of Lieutenant-Colonel, and after the death of Washington was in command of all the American military forces. He was known as "General Hamilton," a title which he no doubt wore with pride, and he was sorely

disappointed when the war clouds drifted away without giving him the opportunity for the military triumphs he had craved.

His opportunity for displaying his real greatness arose during the memorable contest between Jefferson and Burr for the Presidency in 1801. Jefferson and Burr had each received a like number of electoral votes for the Presidency in the campaign of 1800, and the contest was thrown into the House of Representatives for final decision. Jefferson and Hamilton had been bitter rivals in the first cabinet of Washington, where they were leaders of rival political factions. Their two names will always be associated together as the fathers of two schools of political thought, and though both have long since been dead they yet speak to us through the parties they established. Jefferson, the child of wealth and culture, was the recognized spokesman of the democratic masses, while Hamilton, the poor immigrant lad, unjustly called by John Adams the "bawdy son of a Scotch peddler," was the leader of the aristocratic element in America. A man of lesser mental and moral stature than Hamilton would have found delight in joining those who sought to keep Jefferson out of the White House. With him, however, it was a choice between Jefferson, his political enemy, and Burr, Jefferson's able but unscrupulous opponent, whom none knew better than Hamilton. He did not hesitate to throw the full weight of his influence in favor of Jefferson, which decision elected him.

Before this there had been more than the usual friction between Burr and Hamilton. They were opposed to each other on all political issues in New York. They represented rival business groups, and Burr had defeated General Schuyler, Hamilton's father-in-law, for re-election to the United States Senate. The keen political rivalry between the Clinton and anti-Clinton forces had also postponed Schuyler's election as one of New York's first United States Senators so long that Schuyler did not appear on the Senate floor until that body's second session in 1790.

Hamilton, in 1804, took another fatal step in his dealings with Burr. When Burr knew that he could not again be elected in 1804 as Vice-President, the position to which he had automatically fallen heir in 1801 when Jefferson was chosen President, he went back to

New York and aspired to be governor of that state. Jefferson's purchase of the Louisiana Territory had greatly aroused the increasing envy of many New England leaders, who saw the vast possibilities in the great expansion of territory which came to the nation through Jefferson's purchase. A few New England leaders, including Pickering and Wolcott, who had been dismissed from the cabinet of Adams on account of their allegiance to Hamilton, were in sympathy with a plan for the Federalists of New York State to support Burr for Governor, with a secret understanding that Burr, when elected, would use his influence as Governor to have New York State join the New England States in seceding from the Union and to establish an eastern confederacy. Hamilton was also approached but spurned the proposal, Burr was defeated though only by nine thousand votes, and the Union was saved from the first plot for its dismemberment. Again he had checked Burr's infamous plan.

But Hamilton had kept Burr from the governorship of New York only three years after he had kept him out of the Presidency, and the long-drawn-out rivalry between them was soon to reach a tragic climax. Only a little while before, Hamilton had been speaker at a banquet over which Burr had presided as toastmaster, and despite the ill-feeling which existed, outward courtesies had passed between them. But Burr used the report of some remark made by Hamilton as an excuse to send a challenge for a duel. Hamilton did not wish to fight with Burr and was opposed to dueling, but nevertheless felt bound to accept the challenge. The date for the first duel was postponed. While pondering over the grave decision he had made, he wrote the following letter to his wife:

"This letter, my dear Eliza, will not be delivered to you unless I shall first have terminated my earthly career, to begin, as I humbly hope, from redeeming grace and divine mercy, a happy immortality.

"If it had been possible for me to have avoided the interview, my love for you and my precious children would have been alone a decisive motive. But it was not possible, without sacrifices which would have rendered me unworthy of your esteem. I need not tell you of the pangs I feel from the idea of quitting you, and

exposing you to the anguish which I know you would feel. Nor could I dwell on the topic lest it should unman me.

"The consolations of Religion, my beloved, can alone support you; and these you have a right to enjoy. Fly to the bosom of your God and be comforted. With my last idea I shall cherish the sweet hope of meeting you in a better world.

"Adieu, best of wives—best of women. Embrace all my darling children for me.

"Ever yours,

"A. H."

"July 4, 1804.

"Mrs. Hamilton."

The duel took place at Weehawken Heights, New Jersey, just across from New York. The most brilliant eyes that ever flashed defiance at each other were the eyes of Hamilton and Burr when they met in deadly duel, on the morning of July 11, 1804. Hamilton, who seems to have shot his own pistol into the air, was mortally wounded by Burr in the same part of his body and at the exact spot where his eldest son, Schuyler Hamilton, had been killed in a duel exactly three years before. He died on the following day in the arms of Gouverneur Morris, his Federalist friend, who also delivered the funeral oration before his burial in Trinity Churchyard. In that oration, Morris dwelt upon his passion for work, which was to him another name for genius. He had oftentimes labored, said Morris, until his candles were dimmed by the dawn. So ended the life of the great Hamilton, who as Daniel Webster expressed it, "Smote the rock of our national resources and streams of revenue sprang forth; touched the dead body of our public credit and it sprang upon its feet."

He was survived by a wife, four sons, and three daughters. One of his sons, James Hamilton, became a follower of Andrew Jackson, who represented the very antithesis of his father's political philosophy, and served as acting Secretary of State during the first few days of Jackson's first administration as President.

The descendants of Hamilton have intermarried with the descendants of many of the great families in the public life of New York and the East, including those of J. Pierpont Morgan, the New York banker, and John Adams, the second President of the

United States. His widow survived him for nearly fifty years, being nearly one hundred years of age at the time of her death. Her last public appearance was at the laying of the cornerstone of the Washington Monument in Washington on July 4, 1848. Her carriage companion, as she rode to that historic ceremony, was Dolly Madison, the widow of James Madison, her husband's friend and associate in the making of the Constitution; they were both much revered as the widows of giants of days gone by.

Hamilton's private interests were varied. He was one of the founders of the *New York Post*, for more than a hundred years a leading New York newspaper. He was one of the founders of the city of Paterson, New Jersey, named after William Paterson, a fellow member of the Constitutional Convention, and a monument of Hamilton now stands in Paterson in his memory. He was also one of the founders of one of New York's first banks.

One of the fine monuments to Alexander Hamilton is Hamilton College at Clinton, New York, the alma mater of Elihu Root, also a great New York statesman, who in an address at the unveiling of a marble bust of Hamilton spoke of him as "the patriot of incorruptible integrity, the soldier of approved valor, the statesman of consummate wisdom, whose talents and virtues will be remembered by a grateful posterity long after this marble bust shall have moulded into dust." This was taken from the inscription on Hamilton's tomb.

Hamilton was very striking as a personality. Though like Burr a man of small stature, being only five feet six inches tall, he was magnetic and attractive. He had light hair, cheeks as ruddy as apples in autumn time, wonderfully brilliant eyes, and a sparkling wit and humor. He was impatient of all dullness and stupidity, but too proud in manner to be accepted as a popular figure. His own mental revolutions were rapid and his whip-like mind had but little patience with those who plod and pull to achieve. He was more than haughty and vain, and no doubt took great pride in the position he had won in America by his own exertions.

A heroic figure of Hamilton stands in front of the Treasury Department at Washington, a constant reminder, to all visitors, of

one of the creators of our strong national government and our impregnable national credit.

Those who cry aloud for opportunity should read the life story of Alexander Hamilton who, when he had no way to fame open before him, made one by his own unexampled energy of intellect and unconquerable spirit.

#### COLONEL HAMILTON'S PLAN OF GOVERNMENT

1. The supreme legislative power of the United States of America to be vested in two distinct bodies of men, the one to be called the Assembly, the other the Senate, who, together, shall form the legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

2. The Assembly to consist of persons elected by the people, to serve for three years.

3. The Senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to do this, the states to be divided into election districts. On the death, removal, or resignation of any senator, his place to be filled out of the district from which he came.

4. The supreme authority of the United States to be vested in a governor, to be elected to serve during good behavior. His election to be made by electors, chosen by the people in the election districts aforesaid. His authorities and functions to be as follows:

To have a negative upon all laws about to be passed, and the execution of all laws passed; to have the entire direction of war, when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of finance, war, and foreign affairs; to have the nomination of all other officers (ambassadors of foreign nations included), subject to the approbation of or rejection by the Senate; to have power of pardoning all offences except treason, which he shall not pardon without the approbation of the Senate.

5. On the death, resignation, or removal of the governor, his authorities to be exercised by the president of the Senate, until a successor be appointed.

6. The Senate to have the sole power of declaring war; the power



of advertising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the departments of finance, war, and foreign affairs.

7. The supreme judicial authority of the United States to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all cases of capture; and an appellate jurisdiction in all cases in which the revenues of the general government, or the citizens of foreign nations, are concerned.

8. The legislature of the United States to have power to institute courts in each state, for the determination of all matters of general concern.

9. The governors, senators, and all officers of the United States to be liable to impeachment for mal and corrupt conduct; and, upon conviction, to be removed from office, and disqualified for holding any place of trust or profit. All impeachments to be tried by a court, to consist of the chief or senior judge of the superior court of law, in each state; provided, that such judge hold his place during good behavior, and have a permanent salary.

10. All laws of the particular states, contrary to the Constitution or laws of the United States, to be utterly void. And the better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is governor or president.

11. No state to have any forces, land or naval; and the militia of all the states to be under the sole and exclusive direction of the United States; the officers of which are to be appointed and commissioned by them.

### *ROBERT YATES*

Robert Yates belonged to a New York faction which opposed the Constitution. He went to the Convention as an active political opponent of Hamilton and after serving on the compromise committee, which recommended equal senatorial representation for all the states left the Convention on July 5th, as did Lansing, of New York, and did not again attend its sessions. As a result he had but a small part in the making of the Constitution.

The fame of Yates rests largely upon his work as a New York jurist. He was a native of Schenectady, New York, being born there on the 27th of January, 1738. He went to New York City when a lad of sixteen years to take up his classical studies, which were followed by his law studies under William Livingston, who was one of his fellow delegates in the Constitutional Convention. By a singular coincidence, Livingston became, a few years later, guide and counsellor of Hamilton, whose political policies were directly at variance with those of Yates.

After completing his studies, Albany was chosen by Robert Yates as his future home. Early upon entering public life he was elected as solicitor in the court of the Chancellor at Albany. So great was his reputation for integrity and high honor that he was known as the "honest lawyer," an appellation which, in the minds of many, was an anomaly in its day. When twenty-seven years of age he married Miss Jane Van Ness, a member of a fine old Dutch family of Columbia County, New York.

As the Revolutionary issues arose, Yates contributed a number of essays in favor of the rights of the colonies which won much favorable comment. He also served early as a member of the Committee of Public Safety, the group in each of the states organized to oppose the Tories of that time. His next office was as a member of the New York Provincial Congress.

When the convention met in 1777 to write the Constitution of the State of New York, Robert Yates was elected as a member of that body, and served actively in making that state's constitution, which furnished more than one of the clauses incorporated later in the Constitution of the United States. One of his collaborators in the New York convention was Gouverneur Morris.

It was during that year that he became a member of the Supreme Court of New York. It was a time of danger as the war was on between the colonies and the mother country, and in New York especially much Tory sentiment prevailed. A majority of the first families of that state were openly allied with the anti-revolutionary party at the beginning of the war. Yates became famous for his calm and judicial attitude when rancour and hate were much in evidence. This was especially true when Tories

were brought before his court, for he was the good judge who strove to see that justice might prevail even when dealing with an enemy.

A real test of his character as a judge arose at that time. His salary was so small that at times it was said he could not buy a pound of green tea for his tea-drinking wife, yet when he had an opportunity to speculate on forfeited estates, which was one method of fortune-making in New York at that time, he emphatically declared he would sooner die a beggar than own a foot of land acquired by such means.

Yates was the intimate friend of Jay, Livingston, Schuyler, and Hamilton, and other great New Yorkers of that time, though he belonged to a different political group when the question of the new Constitution arose.

He was a poor member of the Constitutional Convention. He opposed a consolidated national government and believed only in the confederation of the states as it then existed. For that reason, like Lansing, he left the Convention.

The notes kept by him during the few weeks he attended the Convention, though brief, rank next to those of Madison in their importance. It has been stated that the pledge of secrecy, made at Philadelphia, was broken by him in the publication of his "notes." The facts are, his notes were not published until 1821, more than twenty years after his death on September 8, 1801.

It was the good fortune of this eminent jurist to serve from 1790 to 1798 as Chief Justice of the Supreme Court of New York. When he retired, after serving on the higher courts of New York for twenty-one years, the New York Senate passed an Act granting him a pension for life, which failed, however, in the New York House and did not become a law.

Though Robert Yates was not one of the makers of our Constitution he was a fine New Yorker, who served as an upright judge and lived the life of an honest man, which Pope properly defined as "the noblest work of God."

*JOHN LANSING, JR.*

The story of John Lansing, Jr., of New York, and his part in the making of the American Constitution, like the annals of the poor, is a short and simple one. Lansing, like his fellow delegate Yates, belonged to the Clinton political faction in New York, which was not in sympathy from the very beginning with the plans for a new government as proposed at Philadelphia, and was in every way at variance with the views of Alexander Hamilton, the third and most powerful member of the New York delegation. As a result, neither Yates nor Lansing contributed much to the text of the Constitution itself and on their return home both made themselves memorable only by their hasty departure from the Convention Hall in Philadelphia, and their opposition to what Hamilton and others had later completed.

The life of Lansing began at Albany, the state capital, and was largely centered there. He was born on January 30, 1754, was educated in the common schools and, while not a college-bred man, lived to become a ranking jurist in Albany and the state of New York. His law teacher was Robert Yates, his fellow delegate at Philadelphia.

When a young man he was the military secretary to General Philip Schuyler in Albany, New York, whose daughter Eliza became the wife of Alexander Hamilton, the future political rival of Lansing, and always his intellectual superior. Lansing was elected a member of the New York Legislature from Albany in 1780 when only twenty-four years of age, where he served for the next six years, being the Speaker of the House at the end of his service there. When in Philadelphia as a delegate to the Constitutional Convention he was serving not only as a member of the New York Legislature, but also as Mayor of the City of Albany. Upon his return from Philadelphia he again was a member of the Legislature and again served as Speaker of the House.

Lansing not only made no contribution to the making of the Constitution while in Philadelphia, but upon his early return home became one of the leaders in New York and in the nation to destroy the work which was done after he and Yates had departed. When the New York Convention met at Poughkeepsie, he was one of the leaders who opposed Hamilton, only to be overwhelmed by Hamil-

ton's superior logic. When it finally voted to ratify the Constitution it was Lansing who made an unsuccessful effort to provide a loophole for New York to secede from the new government if certain amendments were not made to the Constitution which had just been ratified by a majority of the states. One amendment sponsored by him on the floor of the New York Convention provided for United States Senators to serve only six years out of twelve and be subject to recall by the legislatures electing them. In 1790 John Lansing became a member of the Supreme Court of New York, where he served for the next eight years, when he succeeded his friend and teacher, Robert Yates, as the Chief Justice of that Court. He held the position of Chief Justice until 1801, when he succeeded Robert R. Livingston as Chancellor of New York. He served as Chancellor until 1814, when he retired on account of the age limit of sixty years which then prevailed.

In 1804, while serving as Chancellor, Lansing was urged to become an anti-Federalist candidate for Governor of New York to succeed Governor Clinton who, after being out of the governor's office for six years, was completing another term of three years. It was the year of Jefferson's second campaign with Clinton as his candidate for Vice-President, and the anti-Federalists were rising in power in New York. Burr was a coalition candidate and striving for a come-back in New York State. He refused, however, to be drawn into state politics, and after completing his service as Chancellor never again held public office. His successor on the bench was Kent, the great law teacher known by his *Commentaries* to all law students.

The next fifteen years of the life of John Lansing were spent in the practice of his profession and in high service to his city and state. He was much interested in Columbia University at New York and was also Regent of the University of New York at the time of his death.

In personal appearance he was very attractive. He was a large, handsome man of genial manners, noted for his fine conversational powers, and much esteemed in social circles.

John Lansing's career came to an end in a strange way. He was in New York City on December 12, 1829, and when last seen was

leaving his hotel to post a letter on one of the boats which then, as now, travel between New York and Albany. No trace was ever found of him and many rumors were connected with his unexplained departure, the most plausible of which was that he had been murdered by some unknown enemy.<sup>1</sup>

As fate would have it, Hamilton, the only signer of the Constitution from New York, had been killed in a duel twenty-five years before. So tragedy followed in the wake of two of the three New York delegates to the Constitutional Convention.

A nephew of John Lansing, Gerit Yates Lansing, served in Congress from Maine during the administration of Jackson. Another member of the family who won renown was Robert Lansing, Secretary of State in the Cabinet of Woodrow Wilson, and one of the American Peace Commissioners at Paris at the end of the World War.

#### LETTER FROM ROBERT YATES AND JOHN LANSING

TO THE GOVERNOR OF NEW YORK, CONTAINING THEIR REASONS FOR  
NOT SUBSCRIBING TO THE FEDERAL CONSTITUTION

"Sir:

"We do ourselves the honor to advise your excellency that, in pursuance to concurrent resolutions of the honorable Senate and Assembly, we have, together with Mr. Hamilton, attended the Convention appointed for revising the Articles of Confederation, and reporting amendments to the same.

"It is with the sincerest concern we observe that, in the prosecution of the important objects of our mission, we have been reduced to the disagreeable alternatives of either exceeding the powers delegated to us, and giving assent to measures which we conceive destructive to the political happiness of the citizens of the United States, or opposing our opinions to that body of respectable men, to whom those citizens had given the most unequivocal proofs of confidence. Thus circumstanced, under these impressions to have hesitated would have been to be culpable. We therefore gave the

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<sup>1</sup> When this book was published a member of the New York Supreme Court presided over by Lansing was missing after several years' unexplained absence.

principles of the Constitution, which has received the sanction of a majority of the Convention, our decided and unreserved dissent; but we must candidly confess that we should have been equally opposed to any system, however modified, which had in object the consolidation of the United States into one government.

"We beg leave, briefly, to state some cogent reasons, which, among others, influenced us to decide against a consolidation of the states. These are reducible into two heads:

"1st. The limited and well-defined powers under which we acted, and which could not on any possible construction, embrace an idea of such magnitude as to assent to a general Constitution, in subversion of that of the state.

"2nd. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to all.

"Our powers were explicit, and confined to the sole and express purpose of revising the Articles of Confederation, and reporting such alterations and provisions therein as should render the Federal Constitution adequate to the exigencies of government and the preservation of the Union.

"From these expressions, we were led to believe that a system of consolidated government could not, in the remotest degree, have been in contemplation of the legislature of this state; for that so important a trust as the adopting of measures which tended to deprive the state government of its most essential rights of sovereignty, and to place it in a dependent situation, could not have been confided by implication; and the circumstance, that the acts of the Convention were to receive a state approbation in the last resort, forcibly corroborated the opinion that our powers could not involve the subversion of a Constitution which, being immediately derived from the people, could only be abolished by their express consent, and not by a legislature possessing authority vested in them for its preservation. Nor could we suppose that, if it had been the intention of the legislature to abrogate the existing Confederation, they would, in such pointed terms, have directed the attention of their delegates to the revision and amendment of it, in total exclusion of every other idea.

"Reasoning in this manner, we were of the opinion that the leading feature of every amendment ought to be the preservation of the individual states in their uncontrolled constitutional rights; and

that, in reserving these, a mode might have been devised of granting to the Confederacy the moneys arising from a general system of revenue, the power of regulating commerce and enforcing the observance of foreign treaties, and other necessary matters of less moment.

“Exclusive of our objections originating from the want of power, we entertained an opinion that a general government, however granted by declarations of rights, or cautionary provisions, must avoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it, by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, the insuperable difficulty of controlling or counteracting the views of a set of men (however unconstitutional and oppressive their acts might be) possessed of all the powers of government, and who, from their remoteness from their constituents, and necessary permanency of office, could not be supposed to be uniformly actuated by an attention to their welfare and happiness; that, however wise and energetic the principles of the general government might be, the extremities of the United States could not be kept in due submission and obedience to its laws, at the distance of many hundred miles from the seat of government; that, if the general legislature was composed of so numerous a body of men as to represent the interests of all the inhabitants of the United States, in the usual and true ideas of representation, the expense of supporting it would become intolerably burdensome; and that, if a few only were vested with a power of legislation, the interests of a great majority of the inhabitants of the United States must necessarily be unknown; or if known, even in the first stages of the operations of the new government, unattended to.

“These reasons were, in our opinion, conclusive against any system of consolidated government: to that recommended by the Convention, we suppose most of them very forcibly apply.

“It is not our intention to pursue this subject farther than merely to explain our conduct in the discharge of the trust which the honorable legislature reposed in us. Interested, however, as we are, in common with our fellow citizens, in the result, we cannot forbear to declare that we have the strongest apprehensions that a government so organized as that recommended by the Convention



cannot afford that security to equal and permanent liberty which we wished to make an invariable object of our pursuit.

"We were not present at the completion of the new Constitution; but before we left the Convention, its principles were so well established as to convince us that no alteration was to be expected, to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless and unavailing, rendered us less solicitous to return.

"We have thus explained our motives for opposing the adoption of the national Constitution, which we conceived it our duty to communicate to your excellency, to be submitted to the consideration of the honorable legislature.

"We have the honor to be, with the greatest respect, your excellency's most obedient and very humble servants,

"ROBERT YATES,

"JOHN LANSING, JUN."

"His Excellency, Governor Clinton."

## IX

### NEW JERSEY AND THE CONSTITUTION

**I**N a strictly literal sense New Jersey has a peculiar claim to the title of being called the Pathfinder for the Constitution. It was the only state of the five represented at Annapolis that sent delegates instructed to do more than plan for the national regulation of commerce. Its broadly-phrased credentials to its delegates authorizing them to treat on and consider the "exigencies of the nation" was the immediate impulse which finally provoked the new Constitution drafted one year later at Philadelphia.

New Jersey had hesitated to sign the Articles of Confederation because of their failure to provide for some kind of national commercial regulation, and the state had finally become so lukewarm toward the Confederation that its legislature at one time voted to discontinue its payment of the requisitions fixed upon it by the Continental Congress. The Congress sent Gorham, of Massachusetts; young Charles Pinckney, of South Carolina, and William Grayson, of Virginia, as a committee to visit the legislature of New Jersey and urge the rescission of the vote. But while the vote was rescinded and the committee superficially succeeded in its mission, the New Jersey legislature made no provision for paying the delinquent requisitions thereafter.

It, like Connecticut, paid a heavy toll on goods shipped to other states. Connecticut felt the burden of the duties on the wood it shipped to New York; New Jersey objected most to the duty its citizens had to pay on the extensive garden truck they shipped and sold there and to Pennsylvania. One writer compared New Jersey to a man bled in both arms, New York performing the operation on one side and Pennsylvania on the other.

Houston was the only one of the three New Jersey delegates to Annapolis who was also chosen to go to Philadelphia, though his

colleagues at Annapolis, Abraham Clark and James Schureman, were both eminent citizens; the former was a signer of the Declaration of Independence who was also to serve in the new Congress, and the latter was sent a few years later to represent New Jersey in the United States Senate.

The New Jersey delegation at the Philadelphia Constitutional Convention consisted of five delegates, one of the largest there and also the youngest in the average age of its members. Its members were all college-bred, with Princeton the alma mater of four, and Yale the alma mater of its leader, Governor William Livingston. All were young men except Livingston; Dayton, aged less than twenty-seven, was the "baby" member of the Convention.

Perhaps it was this very youth of the New Jersey delegation which kept them from taking what might have been a more assertive position on the floor of the Convention, especially in its early stages. Actually, their credentials were the only ones which authorized them to go so far as to write entirely new articles of government, whereas all the other delegations were authorized only to amend the old Articles of Confederation. Nevertheless they allowed the Virginia Plan and Pinckney's plan for a new Constitution, both of which went far beyond their own modest intentions as expressed later, to be the only ones to be submitted for consideration in the first days of the Convention. For three weeks thereafter they allowed the Virginia and Pennsylvania delegations, and the other individual delegates from other states who advocated a strong national government, to dominate the discussion.

When at the end of the third week Governor Paterson finally submitted the "New Jersey Plan" it turned out to be the antithesis in most important respects of the Virginia Plan hitherto discussed. It began by proposing only to amend the Articles of Confederation, its fundamental principle was equal state representation instead of representation based on the population of each state, and for the rest of the days of the Convention it was the rallying point of the small-state delegates in their opposition to the Virginia Plan and the even more drastic proposals of such men as Alexander Hamilton.



*Jona. Dayton*



*Wm. Livingston*



*David Brearley.*



*Jm. Patterson.*



Nevertheless, Charles Pinckney correctly diagnosed the attitude of its delegates when he tauntingly stated on the floor of the Convention that New Jersey would be satisfied with anything else if it could get equal representation in the proposed United States Senate, and as it turned out, after New Jersey had won equal representation in the Senate by virtue of one of the great compromises of the Convention, its delegates thereafter practically deserted the remaining portions of their original proposal. They then agreed to and at times actively supported numerous proposals looking to a strong national government, and later in life, all of them became staunch Federalists in their party politics.

When the Philadelphia Convention was over the fight for ratification was a one-sided affair in New Jersey. After the state's unhappy experience during the days of the Confederation its intelligent public sentiment was overwhelmingly in favor of the proposed new national government. The state convention met at Trenton on December 17th, five days after Pennsylvania had acted favorably and ten days after Delaware had paved the way. John Stevens<sup>1</sup> presided over the thirty-eight delegates, and after but little discussion they voted unanimously to ratify the Constitution as submitted. One resolution adopted was: "We believe that nothing but the immediate adoption of it can save the United States in general and this state in particular from absolute ruin."

Although the New Jersey delegation at Philadelphia had consisted of young men with the exception of Governor Livingston, its ranks were more quickly broken than those of any of the twelve states represented there. Houston had left the Convention because of ill health before the day set for signing the Constitution and was the first to pass away. His death was soon followed by those of Governor Livingston and Judge Brearly, both of whom died before Washington had fully established the new government.

Paterson and Dayton alone lived to win high renown thereafter, and Dayton was to die under the shadow of his unhappy relations with Aaron Burr, as also of some western land speculations which turned out badly both for him and for those who bought from him.

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<sup>1</sup> Some historians have named David Brearly as the presiding officer.

This left Paterson, the sponsor of the New Jersey plan for the Constitution at Philadelphia, as the only delegate from New Jersey to round out a long public career in as brilliant fashion as it had begun.

#### WILLIAM LIVINGSTON

The chief executives of three states—Governor Edmund Randolph, of Virginia; President Benjamin Franklin, of Pennsylvania, and William Livingston, who had been Governor of New Jersey for the previous eleven years—led their state delegations to the Constitutional Convention at Philadelphia. Governor Livingston was one of the comparatively few old men among the many younger ones present.

William Livingston was born in Albany, New York, on November 30, 1723, and lived the greater portion of his life in New York State. He came from one of its old families, the original Livingston manor estate of over 150,000 acres having been settled in 1686 in the days of the first Dutch expansion north of Manhattan Island. It was located in Dutchess and Columbia Counties about one hundred miles above New York City on the Hudson River; this section was a rendezvous for the Iroquois Indian tribes, who made Albany their capital as do New Yorkers today.

Most of the Indians nearby were Mohawks, and William Livingston, like Sam Houston of a later generation, ran away from home when a boy and lived for a year among them. However, when he was fourteen, and tall and wiry for his age, he entered Yale where his three brothers also were educated, and at eighteen graduated at the head of the class of 1741.

As a young man, he wished to become a poet, and some of his verses still remain to betray the quality of his gifts. In those days newspaper-editing was not looked upon as a business but as a fair field for poets, and a few years after leaving college he moved to New York City to become editor of the *Independent Reflector*. There he could versify to his heart's content, though by modern lights his efforts, which were typical of his day, seem ponderously moral. One of his verses, included in a poem on "The Choice of a Rural Life," ran as follows:

*"When with age thy head is silvered o'er  
And cold in death thy bosom beats no more,  
Thy soul exulting shall desert its clay  
And mount triumphant to eternal day."*

But more mundane ideals eventually gained the upper hand, and Livingston turned to law as a serious profession. He began his practice in New York in 1748. His tall frame had become so angular that he was called "The Human Whipping Post;" but while not an impressive figure, he had a graceful carriage, breeding and charm. He met and married Susanna French, through whom he came into possession of a fine old estate in New Jersey called Liberty Hall, not far from Elizabethtown across the bay from New York City. Here he moved in 1772 and made it his home for the rest of his life.

Livingston's law practice was a flourishing one, and at least one of the other delegates to the Philadelphia Convention, Robert Yates, of New York, got his start as a young man reading law in his library. At Liberty Hall he was also host to young Alexander Hamilton, who was sent to him by Hugh Knox, a leading citizen of the Isle of Nevis where Hamilton was born.

With the outbreak of the Revolution Livingston began his active political career. He represented New Jersey in the first Congress which met at Philadelphia on September 5, 1774, and also served in its second and third sessions. In 1775, he enlisted in the army and saw service as Brigadier-General for one year, until New Jersey elected him as its first Governor under its new constitution in 1776. He had retired from the Continental Congress when the Declaration of Independence was signed, but his brother Philip, who was one of its signers from New York, ably represented the family.

It was his privilege to serve also on important committees dealing with the boundaries between New York and Massachusetts on one side and New York and New Jersey on the other. He also declined appointment as Minister to the Hague.

The Royal Governor of New Jersey had been the illegitimate son of Benjamin Franklin, William Franklin. Unlike the father, the son had elected to remain loyal to his king, was dispossessed by the citizens of New Jersey and sailed to England, where he lived out his life, died, and was buried. Livingston, who was selected to



succeed Franklin as the state's first independent Governor, held the post until he died fourteen years later.

The course of Livingston's governorship was not smooth even after the war was over. Questions involving the relationship of the thirteen states one with another and to the Confederation constantly vexed his administration. His state was still primarily agricultural, and because of its many excellent natural waterways found it highly profitable to ship the product of its extensive truck-gardens to the metropolitan areas of New York City and to Philadelphia. But the laws of those states were not as friendly as they might have been, and heavy import duties were imposed on New Jersey's products.

As a leader of one of the larger of the small-state delegations to the Constitutional Convention, neither Livingston nor his New Jersey associates took a dominant position on the Convention floor. He was to be the conservative though reliable leader whose sound judgment and loyal good sense were often referred to by his associates, but who preferred to do his best work in less conspicuous fashion than some of the more talkative delegates from other states. He and his delegation stood out firmly for equal representation for the states in at least the Senate, and for Federal control and regulation of the highly vexatious subject of interstate commerce, but on the other hand he opposed restricting the President's appointive power by requiring the Senate's approval of all major appointments. Likewise he wished to make the judiciary as independent as possible, though on the other hand he advocated that the Chief Justice and the Secretary of the Treasury should advise with the President on all legislation enacted by Congress. Altogether, his own personal views would seem to have been well expressed in the general outlines of the so-called "New Jersey Plan," which became the rallying point thereafter of the other small states in their opposition to the highly centralized national government proposed by the Virginia Plan.

Perhaps Governor Livingston's greatest single contribution to the practical making of the Constitution was as chairman of the committee which was appointed at a crucial moment to work out some kind of compromise between the anti-slavery New England

states demanding extreme commercial concessions, and the Southern states insisting that the institution of slavery and their export trade be not impaired. As a result of the skill and diplomacy of Livingston's committee the compromise finally adopted was worked out, that slave importation not be restricted by Federal law for twenty years, that the Federal tax on imported slaves be \$10 per head, that export duties be prohibited, and that laws regulating interstate commerce be enacted by Congress by a simple majority vote.

With the adoption of the Federal Constitution his last public service of note came to a close. He survived the establishment of the new national government by a year and a few months, and died quietly on August 25, 1790. His beloved and historic Liberty Hall was still standing in 1936 and was occupied by a descendant of William Livingston, former United States Senator Hamilton Kean, also of New Jersey.

The Livingston family was a large one, and one which remained in the public eye for many years. His nephew, Robert R. Livingston, had been Secretary of Foreign Affairs of the Confederation, as well as a member of the committees which drafted the Declaration of Independence and the Articles of Confederation, though he was not present when the former was signed. Later he became Chancellor of New York and on April 30, 1789, swore in George Washington as President of the United States. However, when Washington failed to appoint him as Chief Justice of the new Supreme Court the entire Livingston family broke with Washington and thereafter became the political allies of Jefferson and the Anti-Federalists.

Jefferson sent Robert R. Livingston to Europe in 1803 to aid in the negotiations for the purchase of New Orleans and the mouth of the Mississippi River for \$10,000,000, which deal was finally consummated on the basis of the purchase from Napoleon of the entire Louisiana Territory for \$15,000,000 in cash, and the assumption of certain claims against France which brought the final cost to the United States to \$27,000,000.

Edward Livingston, the younger brother of Robert R., after holding high office in New York State, moved to Louisiana and from

there went to the House and Senate. As Secretary of State in the Cabinet of Jackson he had a part in writing Jackson's nullification proclamation.

One of William Livingston's daughters married the gifted John Jay. Another daughter became the wife of John Cleve Symmes, a New Jersey Supreme Court Judge who later served under appointment from Washington as one of the three members of the Court of the Northwest Territory. When the Government for that territory was first established all power for a time rested in the Territorial Governor, Arthur St. Clair, and in the three Judges. It was Symmes who, in company with Jonathan Dayton, of New Jersey, promoted the development of the territory lying between the Ohio River and Dayton, Ohio. A daughter of Symmes by a former wife became the wife of William Henry Harrison, the tenth President, and the grandmother of Benjamin Harrison, the twenty-third President of the United States. The tomb of Symmes is near that of the Harrison family at North Bend, Ohio.

Brockholst Livingston, the able son of William Livingston, was like his father a Yale man. He served in Spain as the secretary of his brother-in-law, John Jay, and also as a member of the Supreme Court of the state of New York, after which he was appointed by Jefferson to the Supreme Court of the United States to succeed William Paterson, where he served long and honorably.

Robert R. Livingston was a close associate of his brother-in-law Robert Fulton in establishing and conducting the first practicable steamboat lines in the United States. During a two-weeks' recess of the Philadelphia Convention the delegates had gone down to the shore of the Delaware River and had watched with curiosity while Fitch demonstrated his first experimental steamboat. Nothing came of this venture, but Fulton and Livingston, by a combination of inventive, financial and political skill and acumen, succeeded in establishing a highly profitable line of steamboats up and down the Hudson River. The business as first established under the charter granted by the New York legislature was a monopoly, but in 1824 a competing line was allowed to begin operations between the cross-river points of New York City and Elizabethtown, New Jersey. The Fulton-Livingston monopoly was broken as a result of the famous

case of *Gibbons vs. Ogden*, handed down by Chief Justice Marshall of the United States Supreme Court on March 2, 1824. It was the court's first great anti-trust case, and also the one in which the court for the first time laid down those broad rules which have ever since been the basis for interpreting the interstate commerce clause of the Constitution, in the formulation of which the New Jersey delegation at Philadelphia and William Livingston in particular had played so important a part.

#### WILLIAM PATERSON

William Paterson, the best known of the five New Jersey delegates who attended the Convention at Philadelphia, was the one delegate whose birthplace is not clearly named by historians of the period, though all agree he was born on December 24, 1745. Some of them have named Ireland as his birthplace, while others have declared him to have been born at sea while his parents were enroute to America. At any rate, he was not a native of the country he served so acceptably, but he did become, like McHenry, of Maryland, and Fitzsimmons, of Pennsylvania, one of its fine Irish citizens.

Paterson lived at various points in New Jersey, finally locating at Brunswick. He went to Princeton, graduating in the class of 1763. After leaving college he studied law under Richard Stockton, who not only signed the Declaration of Independence himself but was also the father-in-law of the famous Dr. Benjamin Rush, of Philadelphia, who had also signed the Declaration.

As the controversy between the colonies and England became acute, Paterson identified himself with the revolutionary element of New Jersey. He first held public office in the provincial congress of the state, then he was sent as a delegate to the second Continental Congress. He was an active and useful member of the Congress during its dark days, when it was without a fixed meeting place and was driven here and there by the uncertain tides of its fortunes. He was chosen as its first Attorney General when the new state government was established in 1776, and remained in that position for seven years.

Paterson's most notable service at the Philadelphia Constitutional Convention was in presenting the so-called "New Jersey Plan." The plan was the combined work of the delegates from New Jersey, Delaware, Connecticut, New York, and Luther Martin, of Maryland. He and the other New Jersey delegates were the only ones present who were authorized to go so far as to write entirely new articles of government; nevertheless they objected strongly to the kind of national government proposed by the Virginia and Pinckney plans already before the Convention. This plan proposed merely to amend the old Articles of Confederation, giving the Continental Congress the power to regulate interstate commerce and certain other powers which all agreed it should have, and preserving intact the scheme of representation whereby each state had the same number of votes as every other state, whether large or small. The other small states present quickly endorsed this plan, but Paterson himself eventually abandoned it after the larger states had agreed to permit representation by states in the proposed new United States Senate, and thereafter became a strong champion of the entire plan for the new government, both on the floor of the Philadelphia Convention and in the New Jersey ratification convention which followed.

New Jersey promptly promoted William Paterson to a seat in the United States Senate when the new government was organized in New York City. His colleague was his old law teacher, Richard Stockton, whose wife wrote the "Ode of Praise" sung by school children to George Washington as he traveled in triumph through Trenton on the way to his inauguration as our first President.

Paterson was a useful and capable member of the first United States Senate, which met behind closed doors while he served there. He served on the judiciary committee with Johnson and Ellsworth, of Connecticut, and helped frame the laws which set up the judicial system provided for in the Constitution.

His senatorial career ended one year later when he was chosen as successor to William Livingston as Governor of New Jersey. He had served in that position for three years when Washington selected this able, modest and capable jurist and statesman to serve on the Supreme Court.

Like his colleagues of that day, Paterson rode the circuit assigned to him, which included New Jersey and Pennsylvania, and learned to know personally many of the people. Among the important cases which came before him were those arising out of the Whiskey Rebellion in Pennsylvania and the Alien and Sedition Act, which all but destroyed the Federalist Party of which Paterson was a member. The former states rights leader at Philadelphia was now a loyal follower of those who had championed a consolidated national government. He was the author of *Paterson's Practice Laws* and was known as a jurist of eminence.

Justice Paterson was enroute to a health resort in New York when he was stricken at the home of his daughter, Cornelia, the wife of Stephen van Rensselaer, a member of a fine old Dutch family. He died on September 9, 1806, and was buried in the nearby Manor House vault at Albany, N. Y. Paterson left no male descendants. He was married twice and by a coincidence both ceremonies were performed in the same home.

His best monument is the industrial city of Paterson in New Jersey, founded and named in his honor by Alexander Hamilton. After Paterson had died only Dayton remained of the five New Jersey delegates who together had helped frame the new government of the United States in the Convention at Philadelphia.

#### JONATHAN DAYTON

The "baby" member of any group of leaders always excites interest as to his future career. Jonathan Dayton, of New Jersey, only celebrated his twenty-seventh birthday on October 16, 1787, after the Philadelphia Convention had adjourned on the previous September 17th. He was just one-third as old as Benjamin Franklin, the patriarch of the Convention.

He spent his entire life at Elizabethtown, New Jersey, where he was born in 1760. His father, General Elias Dayton, less than twenty-five years his senior, was one of the great generals of the Revolutionary War, and with such a father it was not strange that young Jonathan should also take up the military life after graduating from Princeton at sixteen years of age.

The first work of Dayton's seven years' service in the Revolution was as an army paymaster. This was followed by active field service at Brandywine, where both General Lafayette and Monroe, a future president, received wounds, and at Germantown. Captain Dayton, as he was henceforth called, also served for a time as an aide on the staff of General Sullivan and was one of the officers at Valley Forge during the historic winter spent there by Washington and his half-fed and half-clothed army. Finally, he joined the French forces of the gallant Lafayette before Yorktown on the coast of Virginia, where he saw the proud Cornwallis march up and surrender to the tired but victorious Washington.

Jonathan Dayton was a member of the New Jersey Legislature at the time he was chosen to go to the Philadelphia Convention in the place of his father, who declined to go. Unlike some of his colleagues at Philadelphia who were also guilty of the charge of youth, Dayton was content to remain in the background, to listen, to speak seldom, and to sign the Constitution when it was completed. Thereafter he went to New York City and for a short time took his seat in the dying Continental Congress.

He was too young to win a place as one of New Jersey's first two United States Senators, and in place thereof he again became a member of the New Jersey House of Representatives, where he served as speaker and paved the way for his future national career. In 1791 he was elected to the Federal House of Representatives in the Second Congress and served there for eight years. During his last four years, being the last two years of Washington's administration and the first two of Adams', he was Speaker of the House of Representatives. He was only thirty-five years of age when he first won the Speakership, Henry Clay being the only other American elected to that position so early in life. He was the only signer of the Constitution to hold that position.

During the years of Dayton's service, Congress met in Philadelphia in a building which is today a national shrine; on the first floor sat the House, in the room above sat the Senate, with John Adams and Thomas Jefferson successively presiding. After eight years' service in the House he was elected in 1799 to the United States Senate, where he served for one term.

His career had been a great one up to this time. Princeton, his alma mater, had conferred on him the honorary degree of Doctor of Laws, and his highly honorable and successful military and political career had won for him a place as one of the leading men of America, though he was less than forty years of age.

But Dayton had a mania for wealth. He had already speculated heavily and to his own advantage in government securities, though so far no public disapproval had resulted. He then turned to real estate as his next field. In those days the country across the Appalachian Mountains lured men as the gold and the oil of a later generation were to lure them across the deserts of the Far West. In company with John Cleve Symmes, Chief Justice of the New Jersey Supreme Court and son-in-law of William Livingston, he bought an extensive tract of land located in the southern part of Ohio, between the Ohio River and the present city of Dayton, which was named after him. Also included in the tract was the site of the present city of Cincinnati, named after the Society of the Cincinnati of which Dayton was a conspicuous figure.

But the title of the promoters to the land they were selling was doubtful, and the speculation ended in failure and ignominy for Dayton. A portion of his land in and about Cincinnati eventually became the property of Nicholas Longworth, husband of Alice Roosevelt and Speaker of the National House of Representatives, the position Jonathan Dayton had held more than a hundred years before. It is said that the original cost of thirty-three acres in the region, most of which is now the city of Cincinnati, was the exchange of a copper kettle.

But the crowning blow to Dayton's public career came in 1807 when he was indicted for treason with Aaron Burr, his distant kinsman who had also lived as a boy at Elizabethtown. He had been fascinated by Burr's magnetic charm from the first day he had entered the United States Senate, over which Burr as Vice-President was presiding officer. No one knows just what Burr's plans were when he set out for the West, and perhaps they grew more fanciful the further west Burr got, perhaps to carve out an empire from what at that time was Spanish Texas. Burr's personal charm was so great that many aided him not knowing right-



fully what it was they were doing, but it is probable that Dayton, whose flights of fancy were not beyond consideration of something desperate as his land bubble showed signs of bursting, knew more than most, and at least some of the tar stuck to him for the rest of his days. He was never brought to trial after Burr, the principal, was acquitted.

After his experience with Burr, like a bird with a broken wing, he could never again soar so high, and lived his remaining days in comparative obscurity. Except for another term in the New Jersey Legislature during the exciting days of the War of 1812 he did not again hold public office. He proved to be a patriot rather than a politician while the war was on, and Federalist though he still was, supported Madison when other Federalists were all but traitors to their country.

He was buried in St. John's churchyard at Elizabeth, New Jersey, at his death on October 9, 1824.

Dayton's nephew, William L. Dayton, served in the Senate of the United States from New Jersey fifty years after his uncle had entered there, but lost his seat when he supported the slavery compromise measures of Henry Clay in 1850. In 1856 the Republican Party, the descendant of the old Federalist Party, put him forward as its first candidate for Vice-President on the ticket with John C. Fremont, but the election was won by James Buchanan and Breckinridge.

#### DAVID BREARLY

David Brearly, New Jersey's cultured and upright judge, was one of the several signers of the Constitution for his state who was to die shortly afterward. He passed away within two years of the adjournment of the Philadelphia Convention.

Judge Brearly, who carried his judicial title to his death, was a native son of New Jersey, born June 11, 1745, near Lawrenceville, where his family were large land owners. He was educated at Princeton not far from his home, and graduated as honor man of his class. Before his death the honorary degree of M.A. was conferred on him by his alma mater.

When the Revolutionary War came on Brearly, like many of his fellow-signers of the Constitution, joined the Continental Army and saw much active service. On one occasion British sympathizers seized him and charged him with treason, but he was rescued by his friends. He took part in the battles of Germantown and Brandywine, and suffered with Washington and his men during the critical days at Valley Forge, until the French alliance brought the revolting colonies of the traditional enemy of France the assistance they needed. France's purpose had not been purely altruistic, for England had only a few years before given France a very thorough drubbing which had cost France Canada, and the northern Mississippi Basin in America and numerous colonial possessions elsewhere.

In New Jersey, William Franklin, the Tory son of Benjamin Franklin, had been deposed as Royal Governor and driven from the state, and Brearly became active in establishing the state's first independent government and in 1776 helped write its first constitution. He became the very able Chief Justice of the state Supreme Court in 1779, and was serving in that capacity when he was elected as one of New Jersey's delegates to the Philadelphia Convention.

Bearly was regarded as one of the great lawyers in the Constitutional Convention. While he took no active part in debates on the Convention floor, he performed excellent service as chairman of the committee on unfinished business which gathered up the various fragmentary proposals offered, and selected the ones to be incorporated in the finished instrument. The office of Vice-President was one of those worked out by his committee, the office being modeled after that of the Lieutenant-Governor of New York, the constitution of which was one of those drawn upon heavily by the Convention. Another of Brearly's own suggestions, offered by his friend Paterson in the heated debate over the New Jersey plan for a Constitution which both supported, was the dissolution of all of the original thirteen states and the creation of thirteen new states, each of approximately equal size, out of the combined area of all the states.

When Washington became the nation's first President under the new Constitution and selected the men to serve in the new judicial branch of the government, he appointed David Brearly, who had returned to the New Jersey Supreme Court bench after the Philadelphia Convention, to what promised to be the very active office of Judge of the United States District Court of New Jersey. He only served in that high office for about one year, for he died on August 16, 1790, at the early age of forty-five at his home in Trenton, the capital of New Jersey, where he was buried in St. Michael's Cemetery.

He was also an honored and active member of the Protestant Episcopal Church, and assisted in compiling one of its first prayer-books in America.

#### *WILLIAM CHURCHILL HOUSTON*

William Churchill Houston, of the New Jersey delegation, was the first one of the fifty-five delegates who attended the Convention to pass away. He was a man of considerable judgment and local prominence, but because of his last illness was unable to attend more than the first sessions of the Convention and did not sign the Constitution when it was finished.

Houston spent most of his life serving in the dual positions of college professor and public official. He was the only native-born southerner who represented a northern state at Philadelphia, although a number of southern delegates had been born in the north.

Houston was born in 1746 in Cabarrus County, North Carolina, not far from the adopted home of Davie, one of the North Carolina delegates at Philadelphia. He came from a family of good breeding and some means, and when he grew to young manhood, armed with a few clothes, a pair of saddle bags, \$250 in money and a restless desire for success, rode on horseback to New Jersey, where he matriculated at the college which later was known as Princeton University. The college was then known as Nassau Hall and was a favorite educational center for the scions of prominent southern families.

He graduated from Nassau Hall in the class of 1768 and soon thereafter was given a position on the college faculty, where he

taught mathematics and natural philosophy for the next fourteen years.

Besides doing his work as a college teacher, Houston served for a time as a captain in the Revolutionary War and was active in New Jersey political affairs. He was sent to the Continental Congress on two occasions, first from 1779 to 1781 and again from 1784 to 1785. In this he followed in the traditions of John Witherspoon, the president of Princeton and one of the signers of the Declaration of Independence.

Houston eventually gave up his teaching career and was admitted to the bar when thirty-six years of age, locating at Trenton, the capital of the state. He declined the position of Comptroller of the Treasury when Robert Morris took charge of the nation's finances in 1781, though from 1782 to 1785 he acted as receiver for the Continental requisitions paid by the states. The last year of this period he also served his second term in the Congress.

Houston was a belated member of the bar, and no doubt found the additional financial assistance which he procured from his appointment as Clerk of New Jersey's Supreme Court of considerable advantage. He was acting in that capacity in the summer of 1786 when he attended and took an active part in the Annapolis Conference, the immediate forerunner of the Philadelphia Convention. He was the only New Jersey delegate at Annapolis who was also sent to Philadelphia.

Houston was already in ill health when he and his superior, Judge Brearly, set out for Philadelphia. He could therefore take little active part in carrying on the work he had initiated at Annapolis, and soon left the Convention in search of the health which he never again found. He did not return and failed to sign the Constitution when it was completed. His death of tuberculosis occurred on August 12, 1788, at Frankford in Pennsylvania, less than a year later and only a few weeks after the Constitution was ratified by the requisite number of states. He was buried in the churchyard of the Second Presbyterian Church in Philadelphia.

Houston was one of the ten Princeton men in the Constitutional Convention and one of the four Princeton men from New Jersey, the others from New Jersey being Dayton, Paterson, and Brearly.

He was one of the four Princeton men who failed to sign the Constitution; Ellsworth, of Connecticut, and Davie and Alexander Martin, of North Carolina, were the other three.<sup>2</sup>

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<sup>2</sup>David F. Houston, who occupied two cabinet positions during the administration of Woodrow Wilson, was a native of the same North Carolina section as William Churchill Houston.

## X

### DELAWARE AND THE CONSTITUTION

**D**ELAWARE, a state so tiny that Senator John J. Ingalls, of Kansas, once facetiously remarked that it had "three counties when the tide was out and two when the tide was in," was the first to ratify the Constitution.<sup>1</sup> Pennsylvania called a ratification convention before Delaware did, but while Pennsylvania was still deliberating Delaware met and acted.

It furnished John Dickinson, the president of the Annapolis Convention in 1786, and two others of the twelve delegates there, and was Constitution-conscious when the Convention at Philadelphia was called to plan changes in the Articles of Confederation as proposed at Annapolis.

Dickinson was not only the most famous of the Delaware delegates at Philadelphia, but was one of the truly great men of his time. He had failed to sign the Declaration of Independence eleven years before, but he was inherently too great a man not to continue to be recognized thereafter.

In addition to Dickinson, two of the five Delaware delegates at Philadelphia, Bassett and Read, were born in Maryland; Bedford was a native of Philadelphia; Broom was the only native son. All five of them signed the Constitution, which was in striking contrast to the State of New York, the name of only one of whose delegates, that of Hamilton, was affixed to the Constitution. It is also noteworthy that Pennsylvania, one of the larger states, was the only one which had more signers to the Constitution than Delaware.

Delaware's delegates had gone to Philadelphia specifically instructed not to agree to any change which would deny that state equal representation in Congress with every other state. It was therefore a great victory for it and the other small states when the

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<sup>1</sup> By a coincidence, Rhode Island, the only state smaller than Delaware, was the last to ratify the Constitution.

Constitutional Convention voted to give to each state the same number of United States Senators, and Delaware was grateful. There were no dissenting factions in the state when the time came to consider ratification, as was the case in nearby Pennsylvania and Maryland.

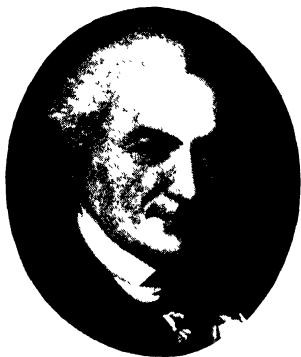
The Delaware ratification convention, composed of thirty delegates from its three counties, met at Dover and unanimously ratified the Constitution on December 7, 1787. The portrait of James Latimer, the President of the Convention, now adorns the walls of the Capitol at Washington.

Delaware was first settled by Swedes and was known for a long time as New Sweden in contrast to New York. Its three counties were known as the "Lower Counties of Pennsylvania" with a legislature of their own until the state became a separate political entity in 1776. Pennsylvania and Delaware together furnished exactly one-third of all the signers of the Constitution.

#### JOHN DICKINSON

One of the finest characters who attended the Philadelphia Convention and signed the Constitution was John Dickinson, of Delaware. But like Benjamin Franklin, Dickinson had accomplished the great achievements of his life before the Convention, and thereafter did not hold any position under the new government about to be established. His name is therefore not as well known as the names of some others who won fame at a later date.

John Dickinson, the eloquent "pen of the Revolution," had refused to sign the Declaration of Independence after contributing much to the public agitation which produced it, had left his seat in Congress, and for the next three years had had no part in the political life of the state he had represented in the Continental Congress. Nevertheless he was no Achilles sulking in his tent, and after his neighbors had irrevocably cast the die for independence he was as active as the best of them in the general cause. He was to be one of the small group of non-signers who were to remain important and honored members of their communities, whereas others who refused to sign the Declaration thereafter sank out of public notice.



*John Dickinson*



*Richard Bassett*



*George*







He was a native of Talbott County, Maryland, where he was born November 13, 1733, on his father's estate of "Crosiadore." His great-grandfather had come from England to Virginia in 1654, and his father was a man of wealth and distinction. When John Dickinson was a small lad his father moved to Delaware and located near Dover, where he was for twenty years a justice on the Royal Court of Pleas in Delaware. His son John was sent abroad for a three years' law course at the Temple in London, where one of his classmates was Cowper, one of England's great poets. His brother, Philemon Dickinson, won fame as a general in the Continental armies during the Revolutionary War, and was later a senator from New Jersey.

The young John Dickinson had grown up to be impressive in appearance. He was tall, spare and severely simple in taste and dress, but was noted for his elegant manners and gentle and affectionate nature. A son of George Read, of Delaware, later spoke of Dickinson, his father's friend, as his "beau ideal" of a gentleman.

Some time after Dickinson's return from abroad he married Miss Mary Norris, of an old Philadelphia family whose home "Fair Hill" was a show-place of its day; it stood in Philadelphia where the Morgan and Drexel Bank Building is now located. Norristown, Pennsylvania, was named after her father's family. Thereafter his entire public career was spent in Philadelphia and nearby Delaware, and his name is inseparably connected with the history of both states.

Dickinson came into his first and greatest fame as the "pen of the Revolution" when the rising tide of resistance to the English Stamp Act first began to flow. His letters to the public under the title "Letters from a Pennsylvania Farmer" ably and eloquently discussed the fundamental differences which arose between King George III and his American Colonies. In them he pointed out what he maintained to be the constitutional rights of the colonies, and put before the thinking element of America the principles involved in the American protest against the taxes imposed by the English King. His defense attracted attention abroad and his letters were published in more than one foreign tongue. One of Dickinson's great maxims was that a free people is one living under a government with constitutional limitations.

He was also a leader in more than one of the historic gatherings in the early life of the nation. He was an active member of the Stamp Act Congress held in New York in October, 1765, and wrote one of the petitions addressed to the English king. On July 6, 1775, Dickinson wrote a declaration for the second Continental Congress setting forth again the grievances of the colonies and the necessity for armed resistance which, however, the Congress failed to adopt, though its members joined in signing another respectful petition drafted by Dickinson which was sent to the King to explain their position.

In June, 1776, it became plain that armed resistance was unavoidable and that the hostilities would be prolonged. Two committees were accordingly appointed by the Congress, one to draft articles for the government of the colonies during the struggle and for regulating their mutual aid and intercourse, the other to draft a Declaration of future policy.

Dickinson was appointed to the first committee, which also included Roger Sherman, who signed both the Declaration of Independence and the Constitution, and Edward Rutledge, the brilliant brother of John Rutledge of the Constitutional Convention. The committee immediately began its work, drawing heavily on a plan proposed the year before by Benjamin Franklin for an American dominion under the control of England. By force of circumstances the Articles of Confederation which the committee ultimately reported out called for an entirely independent national government, but New Hampshire, which was the first state to ratify the Articles, only did so two years later.

This work of Dickinson's, in assisting to draft the mode of government for the colonies during the coming struggle, was clearly not inconsistent with his view that the purpose of the struggle was merely to obtain certain rights under the English Constitution which he claimed were due the colonists as Englishmen of the Empire. But as soon as the other committee appointed at the same time as his had made its report it became clear that his position represented a middle ground which would be utterly untenable in the heat of the coming hostilities. The struggle was to center, not over the rights of Englishmen as Englishmen, but

over whether the colonies should remain English or become independent. The second committee declared unqualifiedly for independence, and submitted Thomas Jefferson's eloquently worded Declaration to that effect for the members of the Congress to sign. This Dickinson refused to do.

He was not alone in refusing to take the radical step of signing the Declaration of Independence. George Washington himself had declared only a year before in the first Continental Congress, of which Dickinson had been a member, that no thinking man in America wanted independence. Dickinson's written explanation for his act of high moral courage was as follows:

"Prudence required that we should not abandon certain for uncertain objects. Two hundred years of happiness and prosperity resulting from English laws, and the union with Great Britain demonstrated that America could be wisely governed by the King and Parliament. Shall the transports of fury sway us more than the experience of ages and induce us to destroy in a moment of anger a work that has been cemented and tried by time? Even when regulated by the powerful hand of England the Colonies had abandoned themselves to discord and sometimes to violence from the paltry motive of territorial limit and distant jurisdiction. What then might they not expect when their minds were heated, ambitions aroused, and arms in the hands of all?"

Dickinson was naturally reviled when he failed to go all the way with the colonies he had instructed on the great issues involved in the struggle with England. He and John Adams clashed on the floor of the Congress over the issues at stake, but Adams hailed from New England, where the flames of war were first ignited, while Dickinson, besides being a Quaker, lived in a section which by no means was unanimous for war. He stuck to his original determination, retired to his country estate near Dover, and abstained from further political activity for the next three years. "If," he said, "the present day is too warm for me to be calmly judged, I can credit my country for justice some years hence."

Dickinson's faith was well-founded, for he enjoyed one of the greatest comebacks in all our history. Though a peace-loving

Quaker, he offered his services to the nation when the war drums began to beat, and he and Thomas McKean, of Delaware, were the only members of the Congress which adopted the Declaration of Independence who saw active military service. He organized a company of Philadelphia elite for the army, for a time held the rank of Brigadier-General, and was one of the many distinguished Americans who participated in the battle of Brandywine.

Three years after refusing to sign the Declaration of Independence he was again sent to the Continental Congress, and two years thereafter was made president of the Executive Council which governed Delaware. A year later he was chosen as the third president of the council of twenty-five which governed Pennsylvania, Benjamin Franklin's home state. This was all the more remarkable as Franklin had defeated Dickinson in 1776 in his popular struggle against the old proprietary leaders of the state, whom Dickinson had defended. One of his allies in that fight was James Wilson, who had studied law under him. Dickinson occupied the Presidency of Pennsylvania until the fall of 1785, when Franklin returned from his successful diplomatic mission to France. He was the only man in American history to serve as chief executive of two states in succession.

In 1786 Delaware sent Dickinson as one of its three delegates to the Annapolis trade conference.

Nevertheless, though few of the delegates at Philadelphia were more renowned than John Dickinson, he was not an active leader in drafting the Constitution. He advocated the plan of the small states for equal senatorial representation, though much of his life had been spent in Pennsylvania, which favored representation based on population, and one of its leaders, James Wilson, wanted representation in the Senate as well as in the House of Representatives to be based on population.

After the close of the Convention he refused the position of United States Senator from Delaware, preferring to devote the last years of his life to leisure and his many philanthropic pursuits, which included the organization of the Quaker Society for Prison Relief and many other worthy projects. In 1783, while serving as President of the Executive Committee of Pennsylvania, John Dick-

inson had been made Chairman of the Board of Trustees of Dickinson College at Carlisle, Pennsylvania, named in his honor, a school originally established by Scottish Presbyterians under the leadership of Dr. Benjamin Rush, but today owned by the Methodist Episcopal Church. For twenty-five years he gave much time and thought to the school, \$5,000 during his lifetime, and in his will left it 500 acres of land and 1,500 books. A memorial room, known as "The Dickinsonianna Room," at Dickinson College, contains the best collection of his papers in existence. Upon assuming the Presidency of the Board of Trustees he delivered the following address:

"Gentlemen: At any time it would afford me a very great pleasure to find myself in the company I now have the honor of meeting. That satisfaction is more enlivened when I consider the occasion that has brought us together and the qualifications of the persons now in my view for performing the trust they are undertaking.

"We are assembled to begin the execution of a plan originating from such pure intentions and directed by such worthy purposes that I humbly hope we may without presumption believe the oblation of our endeavors will not be unacceptable before the best and greatest of Beings. May His Goodness deign to bless the exertions of us and our successors, so that all their effects may be agreeable to His will. Certain I am that you will cheerfully assent to this inestimable truth that no human pursuits deserve regard but what will ultimately refer to that sealing approbation.

"Those who have been principally concerned in setting forward this constitution have been excited to the design by several considerations which shall be mentioned. Other motives indeed have been imputed to them, but through mistake.

"In the first place, they found their minds impressed with a warm sense of gratitude to the Supreme Governor of the universe for the many signal mercies manifested to the people of this land through the late arduous conflict and in its conclusion. Secondly, they judged they could not better employ the beginning of the peace so graciously bestowed than by forming an establishment for advancing the interests of religion, virtue, freedom and literature. Thirdly, they thought that they could not confer a greater benefit upon their country than by promoting the good education of others. Fourthly, they were of the opinion that the particular difficulties and dis-

couragements with respect to such education which the western part of this State labored under, called in a powerful manner for their attention. Lastly, affectionate and favorable sentiments with the sanction of a wise and patriotic Assembly produced that organization which the system now bears.

"It would little become me in this audience and after the excellent discourse which we have this day heard to employ many words in recommending the advantages of good education. You, Gentlemen, are acquainted with them and estimate them at their high and just value. As you are sensible of their importance to the character of the man, the citizen and the Christian, I am sure your hearts will be ardently engaged in generous attempts to diffuse their salutary influences as extensively as possible. Nor can it be reasonably apprehended that your diligence and perseverance will not be properly aided by your fellow citizens.

"When the inhabitants of this and neighboring countries observe your faithful labors for communicating to their youth the treasures of science collected by the wise and good of all ages and names, what father can be so cruel as not to strive that his children may partake of the distribution. Miserably will he deceive himself by supposing that any inheritance he can bequeath is to be compared with a well cultivated mind. It is betraying postering to leave them wealth without teaching them how to use it and thus too frequently all the cares and toils of a parent's life prove to be utterly thrown away by his neglecting the great article of instruction.

"Your efforts, Gentlemen, will be directed to prevent these and the innumerable mischiefs, public as well as private, that spring from defective education. My best wishes will constantly attend your laudable exertions and I shall be happy at all times and in any capacity to give you every assistance in my power."

Dickinson was greatly interested in the promotion of studies of civic questions, and once put up a prize of a hundred pounds for the best essay on government to be written by a Princeton college student. He also left two hundred pounds to apply on the endowment fund of a Quaker school in Philadelphia, and the same amount for the education of the children of the poor in Wilmington, Delaware. His philanthropies might have been larger, but the collapse of the banking house of Robert Morris caused him a loss of 7,000 pounds.

He appeared only twice more in public life after his work in helping formulate the Federal Constitution, first in 1792 to help write a new constitution for the State of Delaware, and again in 1798 he wrote public letters about the impending French war crisis precipitated by the infamous "X, Y, Z" affair.

He died in Wilmington February 14, 1808, and was buried in the Friends burial ground. He left only two daughters surviving him, and no male descendants to perpetuate his name. A collateral descendant, John Dickinson, was a high official during the administration of Franklin D. Roosevelt. In keeping with his love of the simple, only an inconspicuous slab with the initials "J. D." marks his final resting place.

At his death Thomas Jefferson, who was then President of the United States, said of this man who had refused to sign the Declaration of Independence, "His name will be consecrated in history, as one of the great worthies of the Revolution."

#### GEORGE READ

George Read was one of the fine figures in Philadelphia. The state of Delaware has a right to honor the memory of Read, the one Delaware representative in the Constitutional Convention who signed both the Declaration of Independence and the Constitution.

Like Dickinson and Bassett, fellow signers of the Constitution, he was a native of Maryland, having been born in Cecil County, Maryland, on September 9, 1733. He came from a rich Irish family who formerly lived in Dublin. His father bought his Cecil County land from Lord Baltimore who first opened Maryland to settlers. However, his parents moved over in nearby Delaware when he was a small lad and it was there he grew to manhood, achieved his fame, and was finally laid to rest when life's fitful fever was over. He was sent to school at New London, Pennsylvania, where he had among his classmates Charles Thomson, who served as the Secretary of the Continental Congress, and Hugh Williamson, who as a North Carolina delegate signed the Constitution. Read went to Philadelphia to study law. The bar there was a notable one and he was glad to surrender all his claim to his father's estate in order to obtain aid in completing his education. One of his associates in the study of law



was John Dickinson, another signer of the Constitution. When Read felt himself equipped for the bar, he located at New Castle on the Delaware River, which place was his home during the remaining years of his active and useful life.

When he was thirty years of age, he was chosen to serve as the Royal Attorney General of Delaware which was then known as The Lower Counties of Pennsylvania, a position he held for twelve years. During that period he was also a member of the Delaware Legislature. When the agitation arose in the colonies over the proposed new taxes on the part of England, Read, as the Royal representative in the courts, advised England against the proposed tax. The letter he wrote to England explaining the attitude of the colonies made a deep impression. He served in the first Congress, and his name was affixed to the warning that Congress sent to England.

When Delaware joined the other colonies in declaring its own independence and met to organize as an independent American Commonwealth in 1776, Read was the chosen chairman of its Constitutional Convention and was the capable leader in the writing of its first state Constitution. He was serving as a member of the Continental Congress when the Declaration of Independence was written, and it was his exalted privilege to be one of the three first signers of that historic instrument along with Benjamin Franklin, of Pennsylvania, and Roger Sherman, of Connecticut. As fate would have it, both Franklin and Sherman were present and fellow-signers of the Constitution more than eleven years later. Read served also as the acting Governor of Delaware when McKinlay, Delaware's first Governor, was captured by the British in 1777. The whole Read family was a patriotic one, and one of his brothers being with George Washington when he crossed the Delaware.

One of the distinctions which fell to Read as a Continental Congressman was to serve as the chairman of the first naval committee of the Continental Congress, which gave him a claim to the title of our first Secretary of the Navy.

In 1782 he was made judge of the Court of Admiralty. Three years later he was appointed by the Continental Congress to act in a judicial capacity in helping solve a land dispute between the

states of New York and Massachusetts. There were no established courts for that purpose and leaders of judicial temperament were appointed to hear such cases.

He was one of the active leaders in Delaware's energetic delegation of five members in the Constitutional Convention. The small states which won equal senatorial rights with all the states owed much to the fight made by Delaware's delegation at Philadelphia. Read was sympathetic to the plans of Hamilton and others for allowing the President to serve during good behavior and could not be called a progressive member of the Convention in the modern sense of that word.

It was a natural thing for Delaware to choose the quiet lawyer of inflexible integrity, cool determination, perseverance, dignified and austere manners and insistent morals, as one of its first United States senators. He had advocated the election of senators for life, but the Senate did not appeal to him personally enough to keep him there long. After serving in the Senate for a few years, he resigned his seat to become Chief Justice of the Supreme Court of Delaware.

He was ideally fitted for judicial leadership. He was noted for his hard study, research and accuracy as a lawyer. It was said of him by one who knew him that applause at the bar did not generate in him vanity; success in political life, ambition, or dignity on the bench, dogmatism. His life was gentle and the elements of his nature were favorably mixed by his Creator.

It was Read who advised Washington to appoint Joseph Anderson, of New Jersey, as one of the judges for the territory south of the Ohio River established in 1790. Anderson was later for seventeen years a United States Senator from Tennessee and subsequently served as the first comptroller of the United States Treasury.

George Read died on September 21, 1798, while occupying the position of Chief Justice. He was buried in the churchyard of St. Emanuel's Episcopal Church at New Castle. Its rector for fifty years was George Ross, a brother to the wife of George Read. Ross was also related by marriage to George Clymer, one of the signers of both the Declaration of Independence and the Constitution. After the death of Chief Justice Read, his family

lived for a while on a 180-acre Delaware farm given to his widow by his old friend and fellow law student of his early days, John Dickinson, who was richer in worldly goods than his friend.

The forty-room brick home of Read located in New Castle overlooking the Delaware River was standing in 1936 and was a show place. It stood near the spot where William Penn first landed when he came to colonize Pennsylvania.

George Read left a great heritage to his worthy sons who occupied positions of trust and confidence in Delaware and Pennsylvania.

### *GUNNING BEDFORD*

The name of Gunning Bedford is not widely known. Though a fine painting of him hangs on the wall of the nation's capitol at Washington, it is doubtful whether many who look upon it know much of his life and public services.

He was one of the five Delaware delegates at Philadelphia, which city happened to be his birthplace, he having been born there in 1747. His father was a local alderman, member of the first family that came to Virginia in 1621, later moved to Maryland and finally to Philadelphia. His father was a colonial captain in the French and Indian War. So Gunning Bedford was truly an American.

He was prepared for Princeton where he had as his roommate during his first years there the frail but brilliant young James Madison, of Virginia. During his undergraduate life, young Bedford succumbed to the wiles of a charming Delaware maiden who bore the name of Polly Read, a sister of the famous George Read. He won his bride before he won his college degree.

It is said that on graduation day at Princeton in 1771, the wife of Dr. John Witherspoon, the president of the college and also a great colonial patriot, kept the young infant of Gunning Bedford while his youthful wife went to the commencement exercises to hear her husband's valedictory address. Though Bedford got the greater honors on commencement day, his old roommate, Madison, won the greater honors in later life, as has often proved the case with college roommates.

His daughter, Henrietta, who lived until 1881, was a famous woman in her day.

After leaving college, he studied law in the office of Joseph Reed, the first Governor of Pennsylvania, then lived for a while in Dover, Delaware, before finally locating at Wilmington in that state, where he established himself as a lawyer, scholar and orator.

He was sent by Delaware to the Continental Congress in 1783 and was one of the members of that Congress when the peace treaty with England signed by Franklin, John Adams and Jay, was ratified on January 10, 1784. While serving as a member of the gress, he was also chosen Attorney General of Delaware, which position he occupied from 1784 until September 25, 1789, when he was appointed a United States Judge for Delaware by George Washington. Bedford held the Federal Judgeship until his death on March 30, 1812.

He had a vital part in the making of the Constitution. On the floor of the Convention he exerted all his eloquence and influence in behalf of the rights of the small states. On one occasion he went so far as to suggest that the small states might take some foreign nation by the hand and establish their own independence if they were not accorded their just rights in the new Constitution, though he soon lamented his threatening remark and apologized for it when the Convention met on the following day.

In appearance, Bedford was short and stocky and somewhat inclined to be too corpulent for one of his height. He was known for his amiable, winning manners.

The only other public office held by him was one term in the Delaware State Senate. He also served as a Presidential Elector during the two campaigns when Washington was chosen President. There was then no opposition party and his duties were perfunctory.

Bedford lived the life of a good judge and died honored and respected by all who knew him. He was greatly interested in education and served as president of the board of trustees of Wilmington Academy and also as president of the board of Delaware College, now known as the University of Delaware. He was buried in the churchyard of the First Presbyterian Church of Wilmington,

Delaware, the city in which most of his life had been spent. The following inscription is on his tomb:

"In hope of a joyful resurrection through faith in Jesus Christ, here rests the mortal part of Gunning Bedford. Reader, may his example stimulate you to improve your talents, be they five or two with which God has entrusted you."

His name has been confused by some historians with that of his cousin of the same name who was one of the early Governors of Delaware.

#### *RICHARD BASSETT*

Richard Bassett, of the quintet of Delaware delegates at Philadelphia, like Dickinson and Read, was a native of nearby Maryland.

He was born at "Bohemia Manor," in Cecil County, Maryland, on April 2, 1745. Cecil County was also the birthplace of a second signer of the Constitution, George Read, a distinction held by few, if any other, American counties.

"Bohemia Manor" was and remains one of the fine colonial estates of Maryland, for its elegant mansion located near the head of Chesapeake Bay was standing in 1936. The name "Bohemia Manor" was given it in honor of the native land of Augustine Hermann, to whom the original grant of 5,000 acres had been made by Lord Baltimore in 1685 as pay for making the first topographical map of his colony. This fine estate was inherited by Richard Bassett and was in the hands of his descendants when this book was published.

Bassett was not a college graduate despite his wealthy early environment. After inheriting the family estate he moved into nearby Delaware and established homes both at Dover and Wilmington, gave his public services to that state, and kept "Bohemia Manor" as his country home.

When the Revolutionary War came on Bassett served in the army as captain. He made no outstanding military record but for many years was a leader in the Delaware Legislature, and was a member of its first Constitutional Convention in 1776, becoming Speaker of

its House of Representatives ten years later in 1786. He also went down to Annapolis with Read and Dickinson to the important Trade Conference held there in September of 1786.

Bassett was a conscientious though not a distinguished member of the Constitutional Convention, where he voted consistently for the rights of the small states, and the Legislature of Delaware elected him as one of its first United States Senators, from 1789 to 1793. His colleague was Read, the political father of Delaware. Senator Bassett's was the first vote cast in the selection of Washington as the permanent Capital of the Nation when that issue was before the Senate. After leaving the Senate he served his state from 1797 to 1799 as Chief Justice of the Delaware Court of Common Pleas, and then for the next two years was Governor.

He was one of the loyal followers of President John Adams, who appointed him to a Federal Judgeship on March 3, 1801, the night before Jefferson, the first anti-Federalist, was to come into office. The expiring Congress had created a number of new Federal courts in a last-minute effort to circumvent Jefferson, but the Republican Congress elected with Jefferson repealed the act, and the judicial head of Richard Bassett was one of the several which rolled into the basket of Adams' avengers. After this unhappy climax to an honorable and useful public career Richard Bassett retired from public life.

He spent much of his time on his Maryland estate, as did his many descendants. It was at a nearby camp-meeting conducted by Francis Asbury, who was sent to America in 1770 by John Wesley to establish the Methodist Church, that Richard Bassett was converted and began his active religious career as the first prominent Methodist layman in America. Thereafter "Bohemia Manor" became Asbury's place of retreat after his long horseback journeys up and down the Atlantic seaboard and in the far South. Francis Asbury was one of America's first Methodist bishops, serving from 1784 to 1816, and on his equestrian statue in Washington, D. C., at whose unveiling President Coolidge delivered the dedicatory address, his long and arduous devotion is commemorated in the inscription, "Prophet of the Long Road." He was succeeded by William Mc-

Kendree, of Virginia, the first native-born Methodist bishop in America.

Maryland was the mother state in America of the Methodist Episcopal Church, as it was also of the Roman Catholic Church. One of the first Methodist congregations in America was organized on Sam's Creek, in Frederick County, Maryland, by Robert Strawbridge, in 1761, while the first Methodist Conference of sixty itinerant preachers held in America was presided over by Bishops Coke and Asbury in Baltimore at Lovely Lane Chapel on December 24, 1784. Cokesbury, America's first Methodist college, erected a few years later not far from "Bohemia Manor," was destroyed by fire and was never rebuilt.

Bassett not only supported Francis Asbury personally with his means and hospitality, but aided him greatly in organizing the first Methodist churches in America, one of which, known as Wesley Chapel, was in Dover near one of Bassett's three homes. He also delivered lay addresses in the churches, and in one of the old Methodist churches of Philadelphia there is today a bust in memory of this first of a great line of useful servants of their church, state, and country. Richard Bassett and William Few, of Georgia, were the only signers of the Constitution closely allied with the Methodist Church and both were natives of Maryland.

Bassett died at his beloved "Bohemia Manor" on August 15, 1815, and was buried in Brandywine Cemetery at Wilmington.

Bassett's election to the United States Senate in 1789 marked the beginning in a line of family succession in that body inequaled by any other American family. His only child, a daughter, married James A. Bayard, a noted lawyer who was a senator from Delaware from November 13, 1804, to March 4, 1813, and was one of the American Peace Commissioners who signed the Treaty of Ghent at the close of the War of 1812. Bayard while serving as a member of the House before he became a senator was one of the House managers in the impeachment of Senator William Blount, of Tennessee, which took place on February 2, 1798. One of Bassett's grandsons, Richard Henry Bayard, was United States Senator from Delaware from 1836 to 1839 and again from 1841 to 1845. Another grandson, James A. Bayard, Jr., represented Delaware from 1851

to 1864, and he and his son, the noted Thomas Francis Bayard, had the unique distinction of together representing Delaware in the United States Senate for the two years from 1867 to 1869.

The urbane and impressive Thomas Francis Bayard was a Democratic floor leader in the Senate from 1861 until 1881, during the tragic days of the Civil War and the Republican excesses of the post-war Reconstruction Era. He thereafter became Secretary of State in the first cabinet of President Grover Cleveland, during whose administration the Canadian-American disputes over the respective rights of English and American fishing vessels in inland waters of both countries became particularly acute. The Bayard-Chamberlin Treaty regulating the fisheries was signed in 1888 and was rejected by the United States Senate, but in the meantime the English ambassador to Washington had to be dismissed for indiscreet public statements after his own government had refused to recall him. Later, in Cleveland's second administration, Bayard became American ambassador to Great Britain and took an active part in settling the first Venezuela affair, in which Cleveland and Secretary Olney pushed the then somewhat forgotten Monroe Doctrine almost to the limit of its application, and war with England came perilously near. Bayard's son, Thomas F. Bayard, Jr., a great-great-grandson of Bassett, represented Delaware in the United States Senate from 1923 to 1929.

Every generation of the descendants of Bassett has thus been represented in the Senate for shorter or longer periods for more than one hundred and forty years, a record for extended public service not equaled or surpassed in America unless by the Adams family of Massachusetts.

#### *JACOB BROOM*

Jacob Broom, one of the five Delaware delegates at Philadelphia, was not a national figure, though a local Delaware citizen of high repute and great usefulness.

He was the only native son of Delaware to sign the Constitution. One who knew him describes him as a handsome, scholarly, taciturn, accomplished and courageous gentleman. It was said of him that



in his character he fulfilled the saying that, "He most lives who thinks most, feels the noblest, and acts the best."

He was born at Wilmington on October 17, 1752. His father, like the father of Abraham Baldwin, of Georgia, was a blacksmith. His mother was a devout Quakeress, and he inherited the humble spirit and sterling qualities of that sect. He was educated in the private schools of Wilmington and at a local college which no longer exists. At school he was an excellent mathematician, which aided him in his later work as a surveyor and engineer; a map made by him was used by the American army at the Battle of Brandywine fought not far from Wilmington across the Pennsylvania line.

Jacob Broom was one of the silent and inconspicuous members of the Constitutional Convention. He took no vital part in its debates, but was a consistent supporter of the plans advanced by the more distinguished of his colleagues who sought to safeguard the rights of the small states. He favored a nine-year term for the office of President when the Convention was debating that question.

His life was largely devoted to business in and around Wilmington, where he made a fortune in wise real estate investments. In later years he was a stockholder in the Insurance Company of North America, whose President was Thomas Fitzsimmons, a fellow signer of the Constitution. He was one of the founders of the First National Bank of Wilmington, and served on the committee which brought to Wilmington its first powder-mill. As chance would have it, the old Broom home was included in 1936 in the estate of the DuPonts, who have made Wilmington a world center for the manufacture of explosives and chemicals.

The public activities of Jacob Broom were very limited, and the only public office he ever held was that of Wilmington's first postmaster. He was chairman of the committee which prepared the address of welcome when Washington came through Wilmington on his way to Annapolis near Christmas time of 1783 to surrender his commission as the head of the Revolutionary armies. He served on the board of the College of Delaware and was a vestryman in the old Swedes Church in Wilmington, established in 1698. Among his contributions to charity was a gift for a Negro school to be conducted by the Quakers.

His family consisted of three sons and five daughters. One son, Jacob Broom, Jr., lived in Pennsylvania, where he went to Congress; in 1852 he became the first candidate for President of the "Know-Nothing Party," whose platform emphasized allegiance to American ideals, but advocated also religious intolerance. Another son, James Madison Broom, was educated at Princeton and went to Congress from Delaware.

Jacob Broom left behind a number of maxims which guided his life. From Epimenedes: "No office could give dignity to him who held it, but he who held it might give dignity to any office." Another: "To the finest fabric comes decay, and men of Godlike mold return to clay."

He died in Philadelphia on April 25, 1810, and was buried in the yard of Old Christ Church. No stone marks his grave, but Broom Street in Wilmington remains as a monument to one of its best early citizens.

## XI

### MARYLAND AND THE CONSTITUTION

MARYLAND played a greater part in the events which led to the making of the Constitution than it did in the making itself when the Philadelphia Convention met for that purpose.

We have referred elsewhere in this volume to the Annapolis trade conference, which was the immediate step which led to the Philadelphia Convention, and to the absence of Maryland delegates from the conference which it had invited to meet in its state capital. A regard for the dignity of the slowly dying Continental Congress and a final doubt on the part of Maryland leaders of the success of such a meeting explains the failure of Maryland to be represented.

The important part played by Maryland in our nation's history at that period is found in its attitude toward the Articles of Confederation. Maryland was the last state to sign the Articles, and did not then do so until nearly five years after they had first been offered on the floor of the Continental Congress. There was a fundamental principle involved in Maryland's refusal, for unanimous approval was necessary before the Articles could be operative. Its position simply prolonged the "de facto" government which had come into existence under the stern necessity of war.

The leaders took the position that Maryland would not sign the Articles of Confederation until all the states owning public lands had first surrendered such lands to the national government for the use of all, or had agreed so to do. It was argued that the independence of America had been won by the common sacrifice and loyalty of all the colonies and that all land so gained should thereby be considered the property of all the states. Maryland, like several other colonies, had no public lands to surrender, and there was doubtless jealousy of the growing influence of the neighbor,



*Dan<sup>l</sup> Carroll*



*James McHenry*



*Dan<sup>l</sup> of St. Thomas Seneca*



Virginia, with its great western possessions taken in its name by George Rogers Clark.

But Virginia actually was the first of the great land-owning states to propose the surrender of such lands to the Federal Government. As one consideration for such a sacrifice on its part, Virginia had demanded that the Federal Government agree in turn to protect Virginia in its ownership of Kentucky, still sparsely inhabited and of doubtful future, but the Continental Congress refused this conditional offer only a few weeks before Maryland finally signed the Articles.

Maryland finally ratified the Articles of Confederation by having John Hanson, of Frederick County, and Daniel Carroll, of Prince George County, sign them on March 1, 1781, but only after a general agreement among the states owning public lands that as soon as practicable the surrender requested by Maryland would be made.

The name of Hanson henceforth became forever identified with great events in Maryland history. When Maryland voted to choose two representative sons whose figures would be placed in Statuary Hall in the Capitol at Washington, John Hanson was one of the names selected. His marble figure may be seen there today near the other Maryland representative, the famed Charles Carroll, of Carrollton, one of the first of the signers of the Declaration of Independence, and the last one of the signers to enter upon his eternal reward. Carroll served in the first senate of the United States and lived for many years as one of the great figures in American public life. Pilgrimages were made to his home as to a holy shrine by those who wished to see the last remaining face of all the signers of the immortal Declaration of Independence. His last public act was to take part in the laying of the corner-stone which commemorated the opening of the Baltimore and Ohio Railroad in Baltimore in the year 1828.

Some historians have designated John Hanson as the first president of the United States since he became a president of the United States in Congress assembled under the Articles of Confederation after he had affixed his signature to them as a representative of Maryland. As it happens, however, Thomas McKean, Jr., of Del-

aware, a signer of the Declaration of Independence, was the first president of that congress to be chosen after the Articles of Confederation became effective; so if anyone should deserve the nebulous title of first president of the United States, McKean, rather than Hanson, should be the one named.

New York had, some months before Maryland ratified the Articles of Confederation, ceded its doubtful claim to certain lands in western New York and Pennsylvania. On March 1, 1784, when Virginia unconditionally surrendered all claims to the northwestern territory, which has been discussed more fully elsewhere in this volume, Massachusetts followed and gave up its claim to such lands as it may have had on April 19, 1785. Next followed the surrender by Connecticut of the lands claimed by it, located in the northern portion of Ohio, except a body of land fifty miles wide and one hundred miles long containing more than four million acres which included the site of the present city of Cleveland, Ohio. It was known then as now as the "Connecticut Reserve," and the proceeds from the sale of these lands were of much value in its all but insolvent condition. On August 9, 1787, while the Constitutional Convention was in session, South Carolina surrendered its claim to lands located in the southern portions of what are now the states of Alabama and Mississippi, and also to a narrow strip of land lying along the present boundary line between the state of Tennessee and the states of Alabama and Mississippi. North Carolina, which had offered its western territory which included the present state of Tennessee six years before to the Federal Government, only to retract the offer before it had been accepted by Congress, finally ceded it on April 24, 1790. Georgia was the last state to give up its public land, but finally surrendered it to the Federal Government on April 24, 1802, more than twenty-one years after Maryland had signed the Articles of Confederation.

When the time came for Maryland to select its delegates to go to Philadelphia, the state was much torn with internal strife. The paper money craze was sweeping Maryland, and two very distinct political factions were at war over the issue. As a result only one of the original delegates chosen, Dr. James McHenry, attended the convention. Two famous Marylanders of that day, Samuel Chase

and Thomas Stone, both signers of the Declaration of Independence and two of the three representatives of Maryland at the Alexandria conference held two years before, were selected as delegates but declined to go; Charles Carroll, of Carrollton, also refused to attend.

When the convention met, the five delegates who appeared there as the representatives of Maryland were, in addition to Dr. McHenry, Luther Martin, Daniel Carroll, Daniel of St. Thomas Jenifer, and John Francis Mercer.

When the ratification campaign came on later, Luther Martin was joined by Chase and Paca, another signer of the Declaration of Independence, in opposing ratification. The issue in Maryland excited much interest, but the forces in favor of ratification won by a vote of sixty-three to eleven. One of the delegates to the Maryland Convention was General Joseph Wilkinson, of Calvert County, a brother to James Wilkinson of odious memory.

The Maryland ratification convention met on April 21st and five days later voted for ratification. George Plater presided. The forces for approving what had been done at Philadelphia were in control and would not allow Paca to offer his proposed amendments until the vote on ratification had been taken. Of the twenty-eight amendments submitted for consideration, thirteen were approved and fifteen rejected.

#### *JAMES McHENRY*

James McHenry, the only one of the originally chosen Maryland delegates who attended the Philadelphia Convention, and one of its three delegates who signed the Constitution when it had been completed, was a native Irishman, having been born in Ballymena, Antrim County, Ireland, on November 16, 1753. His early years were spent in Dublin, where he attended school; when eighteen years of age he located with other members of his family in Baltimore, which thereafter became his home.

After coming to Baltimore young McHenry for a time went to a school at Newark, Delaware, at which other leaders of the time had been educated. There he prepared himself to take up his future studies in the medical school at Philadelphia conducted by Dr. Benjamin Rush. This great physician-statesman later signed the



Declaration of Independence, while his son, Richard Rush, became a member of the cabinets of Presidents Madison, Monroe and John Quincy Adams, was a candidate for Vice-President with John Quincy Adams in the memorable campaign of 1828 in which Jackson and Calhoun were elected, and later was minister to England.

Like Hamilton and other young men of his day, McHenry owed much of his success to the friendship of George Washington. He became associated with Washington early in his life as a surgeon in the Continental Army, served with Hamilton and others as one of Washington's confidential private secretaries, and through Washington's influence was appointed medical director of the American forces during the Revolution when less than thirty years of age. Washington on his triumphal trip to New York to be inaugurated as President for the first time in 1789 stopped in Baltimore for a visit at McHenry's home.

He had a varied career during his war service. He was captured and held for a time as a prisoner of war by the British soldiers. He was for a short time on the staff of General Lafayette, and when Benedict Arnold, one of America's best generals, betrayed his trust, it was McHenry who was sent by the heart-broken Washington to apologize to Arnold's young Tory wife for unavoidably delaying her breakfast while an unsuccessful effort was made to learn from her the whereabouts of her traitorous husband.

After the victory at Yorktown, in which he had a part, and the end of the war, Dr. McHenry abandoned his work as a physician and surgeon and returned to Baltimore to enter the business and political life of his state. In addition to being a member of the great mercantile firm of McHenry & Sons in Baltimore, established by his Irish immigrant father, he attended the sessions of the Maryland Legislature, in which he served in both the House of Delegates and the Senate, and also for a three-year period in the Continental Congress.

Perhaps as a result of his early association with Hamilton as fellow secretary to Washington during the war, or because as a business man his habits of thought naturally inclined him to think along the same lines as Hamilton, he throughout his political career until Hamilton's death was much swayed by him. McHenry

was an attendant at Hamilton's wedding and wrote facetious verses about it. At the Philadelphia Convention he was genial and affable, but outside of approving what was done at the end contributed little of his own initiative to the making of the Constitution.

After the Constitution was finally ratified McHenry participated in the great banquet in Baltimore to celebrate the event. Down at the city's wharf triumphantly floated a miniature ship all rigged and ready and flying the proud banner "Constitution." After the celebration it was towed to Mt. Vernon as a gift to George Washington, who kept it at anchor off his estate until a sudden squall sent it to the bottom of the Potomac. Writers of the day saw an evil omen in its fate, but to McHenry, the business man, the establishment of a strong national government could presage a successful and prosperous voyage for the real ship of state.

Dr. McHenry was one of the four signers of the Constitution who later held cabinet positions; the other three were Alexander Hamilton, of New York; James Madison and Edmund Randolph, of Virginia. Dr. McHenry became Secretary of War on January 29, 1796, in the cabinet of George Washington after the resignation of General Henry Knox, and remained in that office during the remainder of Washington's term as President. Knox had been a great soldier in the Revolution, Secretary of War under the old Articles of Confederation, the first president of the Society of Cincinnati, and had had the present beautiful city of Knoxville, Tennessee, named after him.

When John Adams succeeded Washington as President he invited McHenry to continue in office as he did other members of Washington's cabinet. Unfortunately McHenry belonged to the Hamilton faction in the Federalist Party which opposed Adams and was much under Hamilton's influence, as were other members of the cabinet, though Hamilton was not identified with the government at the time. So overwhelming was that influence that McHenry, Secretary of State Pickering, and Secretary of the Treasury Wolcott were at last all requested by Adams to resign, which they promptly did on May 13, 1800. Hamilton had urged Adams to declare war against France, and Washington had actually agreed to again become the head of the American Army with Hamilton, Knox, and Pinckney

as his active assistants, the Secretary of the Navy was made a cabinet officer for the first time, and plans were actively afoot for war. But Adams, who had learned the arts of diplomacy during his long service abroad, sent the conciliatory Oliver Ellsworth and others to France and saved the day for peace.

The two enduring monuments today to the memory of McHenry are the great military school of the nation at West Point, on the Hudson River, which was established under his direction as Secretary of War, and the nationally known Fort McHenry, in Maryland, before which Francis Scott Key was inspired during the long night to write the "Star Spangled Banner" as he watched the fort being shelled by English gunboats during the War of 1812.

After resigning as Secretary of War McHenry retired to his Maryland estate "Fayetteville" and devoted his remaining years to his business activities in Baltimore. He had inherited the family fortune on the death of his father and brother, and was considered one of the wealthy and respected men of the city. He was a leader in the Maryland Bible Society, was otherwise also identified with the religious life of Baltimore, and was known as a sincere Christian gentleman.

He at various times kept up his medical activities, and the last prescription he ever wrote was for his old friend, Alexander Hamilton, who was one of his patients.

Though not a literary man, McHenry was the author of a book entitled *The Three Patriots*; its principal characters were Jefferson, Madison, and Monroe, the great Virginia triumvirate which controlled the politics of the nation from 1801 to 1825. Little is known of the slender volume, but it is safe to assume that coming from a Hamiltonian it was neither flattering nor laudatory.

James McHenry died on May 3, 1816, and was buried in the yard of Westminster Presbyterian Church at Baltimore. While his name is not widely known to students of the constitutional period, a time which, in the words of Thomas Paine, "tried men's souls," he nevertheless served in it honorably if not brilliantly.

#### DANIEL CARROLL

Daniel Carroll was the one signer of the Constitution whose life

began and ended near the present city of Washington. He was born in Upper Marlboro, Prince Georges County, Maryland, July 22, 1730, and was educated in local schools.

The family of Carroll is a notable one in American history, as it is in the history of the Catholic Church in America. The famous Charles Carroll, of Carrollton, the richest signer of the Declaration of Independence and the last one to die, was a cousin of Daniel Carroll.

John Carroll, a brother of Daniel Carroll, a Catholic priest, was the first Catholic bishop in America. Georgetown University, a Catholic university located near Washington, was founded in 1789, the year of Washington's first inauguration, largely through his leadership. Here it may be added that Daniel Carroll and Thomas Fitzsimmons, of the Pennsylvania delegation, were the only Catholic communicants who signed the Constitution.

Daniel Carroll, however, did not need renowned relatives to bolster his own fame. He was a party to many important historical events in American history. As a member of the Continental Congress from Maryland, when he served from 1780 to 1784, he signed with John Hanson, of Maryland, the Articles of Confederation on March 1, 1781, and thereby made effective our first Constitution, which had been drafted nearly five years before. The significance of the part played by Maryland in that connection is told elsewhere in this volume. As a member of the Constitutional Convention, Carroll voted with those in favor of a strong national government and used his influence to have Maryland ratify what had been done at Philadelphia. He had served in the State Senate of Maryland and was influential both on account of his own worth and his fine family connection. When the new Congress was selected to support Washington, Maryland sent Daniel Carroll as one of its first Congressmen.

After two years' service in Congress, he was appointed by Washington as one of the three commissioners in charge of laying off the District of Columbia and superintending the building of the Capitol of the United States. Another commissioner was Dr. David Stuart, of Virginia, who had married the widow of John Parke Custis, the son of Martha Washington. Dr. Stuart served as one of the executors of the John Parke Custis estate, which consisted of much land

including that now embraced in Arlington Cemetery. The John Parke Custis home known as "Abingdon," which stood on the highway leading from Washington to Alexandria, Virginia, was burned only a few years ago. The former widow of young Custis, who had four children when Custis died, was the mother of sixteen additional children as the wife of Dr. Stuart.

The third member of the commission was Thomas Johnson, the first Governor of Maryland, and later a member of the Supreme Court of the United States. The act providing for the District of Columbia called for territory ten miles square. It included land in both Maryland and Virginia, until nearly fifty years later when the Virginia land was redeeded to Virginia. More than 7,000 acres of land were originally purchased at a price of less than \$70 per acre for government purposes. It has been erroneously stated by many writers that Daniel Carroll owned and sold the land where the Capitol building now stands. The lands there were included in the farm of another Daniel Carroll, a cousin of the Commissioner. This cousin of Daniel Carroll, who bore the same name, has been confusing to many writers who have credited to that cousin some of the acts of the Daniel Carroll, who signed the Articles of Confederation and the Constitution. His namesake died more than thirty years later, and it was his land which included the ground now occupied by the Capitol of the United States and the Library of Congress.

The laying of the corner-stone of the Capitol on September 18, 1792, was a great event. Washington presided in the dual capacity of President and Freemason at the historic ceremonies. In this connection it may interest the reader to know that General John A. Logan, of Illinois, in 1868, while serving as a United States Senator from Illinois, made a serious effort to have the capital moved to St. Louis. A site for such was offered by that city to the Government and an unsuccessful effort made to create sentiment for such a change. The lands now occupied by the White House, Washington Monument, and other national buildings were purchased from a thrifty Scotchman named David Burns, whose opulent daughter became a popular belle as a result of the riches which the sale of her father's lands brought her.

Daniel Carroll died June 19, 1796, after having rendered great

service to his day and generation. He was buried in St. John's Catholic Cemetery at Forest Glen, Maryland. He may truly be portrayed as a useful and patriotic servant. The Carroll family had many notable descendants active in public life in various parts of America when this book was published. William Carroll was a candidate for the democratic nomination for Governor of Wisconsin in 1936.

*DANIEL OF ST. THOMAS JENIFER*

Daniel of St. Thomas Jenifer was one of the least active members at the Philadelphia Convention, though he signed the Constitution and played an active part later when it came time for Maryland to ratify. He was one of the substitute delegates chosen when others named elsewhere refused to go as delegates. He was born in 1723, and was therefore one of the small group of older men in the Convention.

Jenifer, however, had had an active part in some of the vital steps which culminated in the making of the Constitution. He had served as one of the Maryland men who represented Maryland at the Alexandria Conference of 1785. He and Chase had also represented Maryland ten years before the Constitution was written at a meeting with Virginia delegates, at which were discussed the same issues which were ultimately settled at Philadelphia.

Jenifer was born and spent all of his life in Charles County, which borders on the Potomac below the City of Washington, and there he is now buried.

The public life of this genial and wealthy Maryland bachelor began with the pre-Revolutionary activities of the colonies against the Mother country, during the agitation over the Stamp Act. Jenifer attended, and was a leader in, the public gatherings in Maryland, and at one time served on the Governor's Council. During his earlier service separation from England was not yet thought of, but from 1775 to 1777 he was active on the Committee of Safety, which organized the Revolutionary spirit at a time when independence was a prize to be striven for rather than an achievement to be enjoyed.

When the Maryland state government was established under the

Constitution of 1776, Jenifer became a member of its first state senate, and for three years, from 1777 to 1780, was its president. During that period he was also elected to the Continental Congress, and served for the usual three-year period, the limit for consecutive attendance under the Articles of Confederation. However, he was twice defeated for the governorship of Maryland, once in 1782 and again in 1785.

Jenifer proved to be an inconspicuous and silent member of the Philadelphia Convention and had no constructive part in the making of the Constitution. However, he approved of what was done there by others, and when the perturbed Luther Martin, just before leaving Philadelphia, said to Jenifer, "I'll be hanged if the people of Maryland ever approve of what is being done here," Jenifer promptly replied that if Martin felt that way he had better "get ready for the rope." Jenifer was later active in the popular campaign for delegates to Maryland's ratification convention, and he was also largely responsible for the rout of Luther Martin, who had been vehemently opposed to the Constitution at Philadelphia, and had come to the state convention determined to overthrow it.

Jenifer died on November 16, 1790, the first one of the three Maryland signers of the Constitution to pass away. He was buried in Charles County, Maryland.

President Mitchell, of the 1933 Maryland Senate, was the husband of a descendant of one of Jenifer's near blood relatives.

A nephew and namesake of Jenifer was a Maryland Congressman for one term during the administration of Andrew Jackson, and also served as Minister to Austria during the administration of John Tyler.

#### *LUTHER MARTIN*

One of the most striking personalities of the Philadelphia Convention was Luther Martin, of Maryland. His name does not appear among the signers of the Constitution, but he was the only Maryland delegate who created any great interest by his activities at Philadelphia.

Luther Martin was a native of New Brunswick, New Jersey, where he was born on February 9, 1744, and grew up as a boy.

He was prepared, as were many New Jersey boys, to enter Princeton, then known as "Nassau Hall," and graduated there in the class of 1766.

After leaving college Luther Martin taught school for five years at Queenstown, Queen Anne County, Maryland. He studied law at the same time, and in 1771 when he was twenty-seven he gave up teaching and was admitted to practice law at Williamsburg, Virginia. At that time Williamsburg was one of the attractive and promising fields for young professional men, and was rivaled only by Fredericksburg as a leading cultural center. It was the site of the College of William and Mary and was the capital of Virginia.

Martin practiced law for a time in Accomac County, Virginia, but the unrest which preceded the Revolutionary War took hold of him and after only a few years he decided to locate in Maryland, the scene of his first labors. There, through the influence of Samuel Chase, one of the prominent and able lawyers of the state, Martin was elected in 1778 to the office of Attorney General, which position he held for the next twenty-seven years. He was already known as a brilliant lawyer, and won fame as Attorney General which extended beyond the borders of his state. He was also elected for one year to the Continental Congress, and was serving as Attorney General of his state when he was chosen as one of the five delegates to represent Maryland in the Constitutional Convention.

The part played by Martin on the floor of the Convention at Philadelphia was not a constructive one. From the opening of the Convention he found himself out of harmony with its leaders, who were determined to establish a new and firmer national government. He stood with the small states group, but on more than one occasion voted contrary to the votes of a majority of his fellow delegates from Maryland and with the group led by the delegation of his native New Jersey. When the question of the number of senators to be allowed each state was under discussion he delivered a long, incoherent and nebulous address on the subject which did not enhance his reputation among the other delegates. Finally, when it was evident that he would be outvoted on all the important issues and that his extreme states' rights doctrine would be cast to



the winds, he returned to Maryland and was absent during the closing days of the Convention.

On his return to Maryland, Martin appeared before the Maryland house of delegates and delivered a long rambling defense of the position he had taken at Philadelphia. He talked almost an entire day, and bystanders were convinced that he was considerably inebriated.

In the Maryland ratification convention he again appeared and vehemently and eloquently opposed the new Constitution, but was utterly routed by the forces favoring unconditional ratification.

But though Martin did not present a happy figure in connection with the writing of the Federal Constitution, he maintained for years an eminent position as a brilliant and redoubtable lawyer, and appeared as one of the leading counsel in two trials which stand out among the famous trials of American history.

The first was the impeachment trial in the first administration of Thomas Jefferson, of Martin's old friend, Samuel Chase, then a member of the Supreme Court of the United States. Chase was tried before the Bar of the United States Senate, in the chamber which later was the court-room of the Supreme Court of the United States. Aaron Burr, then Vice-President, presided. The redoubtable John Randolph, of Roanoke, the House Manager in charge of the prosecution, was vindictive and bitter, and used all his telling gifts of speech to gain a conviction. But though a majority of the senators voted to convict on three of the five charges made against Chase, the requisite two-thirds majority could not be obtained, and Chase, the only member of the United States Supreme Court ever to be impeached, was acquitted. Martin by his brilliant defense had well repaid Chase for the services he had rendered him years before.

The other great trial in which Martin appeared was that of Aaron Burr in 1807. Burr was charged with a treason in attempting to carry out certain hazy plans he had formulated for colonizing a portion of what is now the state of Louisiana, and for an expedition to take what is now Texas from Spain. He was put on trial in the United States Court at Richmond, Virginia. John Marshall, the Chief Justice, presided, and a great array of legal talent appeared

for both sides. Among Martin's colleagues who aided him in defending Burr was Edmund Randolph, the great Virginia lawyer. George Hay, the son-in-law of James Monroe, was the United States District Attorney who prosecuted the case. Burr was acquitted and Martin again won a great triumph as an advocate.

After being out of the office of Attorney General for thirteen years, Martin again was chosen Attorney General of Maryland in 1818, but due to advancing age and his rapid physical and mental decline he served for only two years.

The last years of Martin's life were years of extreme pain and poverty. He had wasted his material substance in careless if not riotous living, and now as the shadows began to fall few stars appeared in his evening sky. As a young man he had been arrested for debt, and thrift was not one of his virtues. So great, however, was his popularity in Maryland and so vivid was its memory of his long services that its legislature passed an act which taxed each member of the Maryland bar five dollars for a pension fund for this former public servant who had known so well how to sway others but had failed in the still greater art of ruling his own spirit. The act, which was clearly unconstitutional, never became a law.

But Martin was still not entirely without friends. When Aaron Burr learned of the unhappy plight of the man whose brilliant talents had aided in his acquittal years before, he invited Martin to come to New York and be his guest during his last years. The invitation was accepted, and it was in Burr's New York home that Luther Martin died on July 10, 1826. His body was laid to rest in Trinity churchyard not far from the tombs of Alexander Hamilton and Dr. Hugh Williamson and William Livingston, whose names are affixed to the Constitution which Martin had so vigorously opposed.

#### *JOHN FRANCIS MERCER*

The name of John Francis Mercer does not appear among the signers of the Constitution. He not only was absent when that great document was signed, but the records of the Convention show that he was in attendance there only eleven days beginning August 6, 1787.

It is doubtful whether this young, aristocratic, native Virginian, who sat there as a delegate from Maryland, realized the far-reaching results of the labors in which he failed to have a part. Young Mercer was scarcely more than twenty-eight years of age at that time, having been born at a country place called "Marlborough," in Stafford County, Virginia, on May 17, 1759. The Mercer family was related to the Mason family of Virginia, and no member of the Convention came there with more reason for pride in his ancestry or his own career up to that time.

Mercer was one of the five graduates of the College of William and Mary who went to Philadelphia. He was the only William and Mary man who came there as the delegate of a state outside of Virginia.

It was the good fortune of young Mercer to win his college degree in his sixteenth year and then to leave immediately for service in the Revolutionary War. News of Lexington and its "minute men" and Concord where, as Emerson expressed it, "the embattled farmers fired the shot heard around the world," had reached the town of Williamsburg on his graduation day, and fired with the enthusiasm of youth and the patriotic fervor of that day, he marched away to war. He was first a lieutenant in the army. At Brandywine, like Lafayette and James Monroe, a future President, he won a scar of honor. At Monmouth, he served on the staff of General Charles Lee and no doubt carried through life memories of the historical outburst of the great Washington when he delivered his memorable reprimand to Lee for his cowardice. The last year of his life as a soldier was spent in North Carolina where he equipped at his own expense a troop of horsemen. Like Hamilton, Dayton, and other young soldiers, his military career came to a glorious climax when he had the good fortune to be at Yorktown and witness the surrender of Cornwallis. He served under the leadership of Lafayette in that victorious hour, when with the combined aid of a French army and navy, the American forces routed the British, and in the eyes of the English leaders won the war, though the peace terms were not proposed for some time.

After the war was over, Mercer studied law under Thomas Jef-

ferson, whose political leadership he championed later when Jefferson became the leader of a great party, and began as a lawyer in Williamsburg. One of his first public services after the ending of the war was to represent Virginia for three years in the Continental Congress. Though a war veteran, he was a very young man. An older brother, James Mercer, was also a Continental Congressman from Virginia.

It was the good fortune of this proud young Virginian at this period of his life to marry a wealthy and attractive young Maryland lady who bore the name of Miss Sophia Sprigg. As a result of that marriage, he moved his residence from Virginia to Maryland where he lived the remainder of his life on his plantation at West River, Anne Arundel County. He had lived there only one year when he was chosen as a delegate to the Convention.

Mercer was a follower of Luther Martin, and while in the Convention openly expressed his opposition to the kind of government being established. He was alone in his stand for paper money, the evil which had brought sorrow to so many of the colonies. Though in the Convention less than two weeks, he did not fail to express his views on the subjects then up for discussion.

When the third congress was elected Mercer was chosen as one of the six congressmen from Maryland. He had been in Congress for a short time as the successor to William Pinckney, resigned. In that congress he soon became allied with the anti-Federalist forces and openly opposed many of the policies of Washington. After serving for four years in the House of Delegates, he was elected Governor of Maryland in 1801 during the time of Jefferson's administration. One of his acts as Governor was to remove the property qualification for voters in that state.

Though a follower of Jefferson, Mercer refused to follow the leadership of Madison when the War of 1812 was declared, and was an open critic of the President and his war policies. His last years were spent on his Maryland plantation called "Cedar Park." He was best remembered by his gifted daughter, Margaret Mercer, who established a famous college for young ladies at Cedar Park, Maryland, and also became widely known on account of her work as an anti-slavery leader. She proved her own sincerity by freeing the large

number of slaves she had inherited and by paying for their passage to Liberia when it was opened as a haven of refuge for former American slaves through the work of the American Colonization Society. It had been the great dream of that Society to peacefully provide a country of their own for the enslaved blacks, and thereby gradually abolish human slavery in America—a great vision which faded into night, only to be followed many years later by the darkness of a civil war.

John Francis Mercer died in Philadelphia on August 30, 1821, and was buried near his Maryland home.

## XII

### NORTH CAROLINA AND THE CONSTITUTION

**N**ORTH CAROLINA, like Rhode Island, voted twice on the question of ratifying the Constitution before finally approving it. It was the only southern state which failed to approve the Constitution when its convention first met to consider ratification.

North Carolina was one of the old states, its permanent settlement having been made in 1663. Sir Walter Raleigh and his unfortunate companions touched its eastern shores in 1584 with a charter from England which granted them great privileges, but they were not then destined to make a permanent settlement. North Carolina was governed by royal rulers under a provincial form of government until 1776, when it threw off the yoke of England, wrote a Constitution of its own, and established an independent state government.\*

In 1787 North Carolina was struggling with an internal problem probably as acute as that of any of the states. Economically it was in the throes of the paper money craze, but bound up with this was a very acute political situation. The state at that time comprised not only the seaboard portion east of the Appalachian Mountains which we now call North Carolina, but also all that portion west of the watershed as far as the Mississippi River, which included the territory embraced in what is now Tennessee. The western region had filled rapidly with hardy but turbulent frontiersmen after the war, and was receiving but scant help from the eastern and older parts of the state. Communications back across the mountains were in fact far more difficult than down the river to the Mississippi, Spanish New Orleans, the Caribbean Sea and the Gulf of Mexico, and when the folks back home turned an inattentive ear to the requests of the frontier for protection against the numerous Indian tribes which surrounded them, that land-locked region quickly, though perhaps reluctantly, looked down streams for its future. The

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\* See page 21.

precise extent of Spanish influence on the region has never been determined, but what is now the middle section of Tennessee was for many years known as the "Miro" district, after Miro, the Spanish commander at New Orleans.

North Carolina was not proud of its frontier offspring, sought to discourage further migrations to the region, and in 1784 had offered the region to the Continental Congress free, though it withdrew this offer before that body could accept. North Carolina was apparently also motivated in part by a desire to reduce its natural tax burden, for the Continental Congress made its periodical requisitions for funds on the basis of the area of the contributing states, and needless to say, the western portion of the state, while it increased the requisitions considerably furnished none of the funds with which to pay them.

The first act of this turbulent region after North Carolina's offer and the failure of the Continental Congress to accept it was to create the *de facto* State of Franklin with John Sevier as its first Governor, for its people now felt themselves utterly outcast and without protection from any source, state or national. Its next was to send William Cocke<sup>1</sup> to New York with a petition to the Continental Congress for admission as a state, but the petition was denied because North Carolina refused to give its consent. The state of Franklin thereafter continued its precarious existence as best it could, without aid or recognition, and its *de facto* legislature was in session at the very time the Constitutional Convention was sitting.

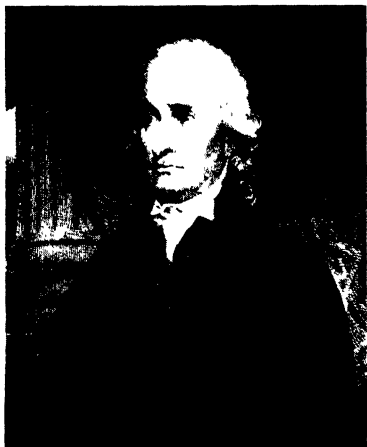
This western region became particularly incensed by Jay's first proposed treaty with Spain, negotiated with San Diego de Gardoqui, Spain's representative to the Continental Congress, which would have cut off all American rights in the navigation of the Mississippi River for twenty-five years, in return for valuable rights to eastern shippers in Spanish ports. To Tennesseans this was selling their birthright for a mess of pottage, and it did not hesitate to say so. Secret Spanish emissaries visited the leaders of both Kentucky,

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<sup>1</sup> Milton H. West, who succeeded John Nance Garner as Congressman from Texas when he became Vice-President of the United States on March 4, 1933, was a great-great-grandson of William Cocke.



Wm Blount



A. Williamson Richd Bobbs Spaight





then a part of Virginia, and the middle section of what is now Tennessee, then a part of North Carolina, in a vain effort to get the leaders of these sections to organize an independent commonwealth under the protection of Spain. James Wilkinson, dubbed by a modern biographer "The Polished Scoundrel," was the master mind behind the unsuccessful plot. Sebastian, a Kentucky judge and former rector, was also in the secret pay of Spain. There was then a population of 50,000 in the two states. Spain would have had a strangle hold on America with both East and West tied to her. Seven of the nine states necessary to make the treaty effective voted for the Jay-Gardoqui Treaty. It was rejected by the Congress partly because of western protests, but henceforth those early Tennesseans looked with disillusioned and mistrusting eyes to the East.

The influence of this western area was not directly felt at Philadelphia, for all the North Carolina delegates were from the aristocratic eastern and tidewater sections of the state, though doubtless the delegates were just as keenly aware of its rumblings as King from Massachusetts was of the just suppressed Shays' Rebellion in his state.

The North Carolina delegates at Philadelphia were William R. Davie, Richard Dobbs Spaight, Dr. Hugh Williamson, Alexander Martin, and William Blount. Two of them, Blount and Williamson, were chosen in the places of others who failed to go, Blount taking the place of the state's first governor, Richard Caswell, and Dr. Williamson going as a substitute for Willie Jones of Revolutionary fame. Blount and Williamson were at the time also members of the Continental Congress, and it was easy for them to go down to Philadelphia from New York, the seat of the Congress.

The most important and far-reaching contributions made to the Constitution by the North Carolina delegation was in casting the vote of that state on the side of the small states when the final vote was taken to determine the question of equal state representation for all the states in the United States Senate. The other southern states of Virginia, Georgia, and South Carolina were allied with the vote of Pennsylvania against equal representation. The vote of North Carolina, together with the votes of New Jersey, Dela-

ware, Connecticut, and Maryland, gave a majority of one for equal representation in the Senate. It was due to the great leadership of William R. Davie, who unfortunately was not present to sign the Constitution at the end, that the acute crisis was met and the deadlock of the Convention broken. It is safe to say that without the equal representation of all the states in the Senate, the smaller states would never have agreed to a Constitution, no national government would have been established, and chaos would doubtless have arisen in the colonies.

When the first ratification convention met in the Presbyterian Church at Hillsborough on July 21, 1788, with Governor Samuel Johnston as chairman, sentiment was overwhelmingly against ratification. The leaders against ratification were Willie Jones, of Halifax, who had declined to go to Philadelphia, and David Caldwell, a leading Presbyterian minister. Jones was a Revolutionary War hero and widely influential, but was unsuccessful at the start in an effort to have the convention vote on the question of ratification before the question had been discussed, and thereby hurt his own cause, although at the end he did magnanimously propose a resolution, which was adopted, that North Carolina send to the national treasury all duties collected on goods shipped into North Carolina. Caldwell, like Patrick Henry, was greatly disturbed because the Constitution began its preamble "We the people" instead of "We the State." Davie, who defended the Constitution, denied that a consolidated government was intended.

The leaders for ratification in North Carolina, in addition to W. R. Davie, were James Iredell and Richard Dobbs Spaight. Iredell was rewarded later with a seat on the Supreme Court of the United States at the hand of Washington, a post which he occupied before he was forty years of age. Sentiment in the western portion of the state was then all but unanimous against the Constitution. The few delegates who came from that section were all but violent in their opposition. The only extreme western North Carolina delegate who voted for ratification came from what is now Sullivan County, Tennessee (Bristol is the county seat). James Robertson, who represented the section of North Carolina now known as middle Tennessee, was allied with the forces opposed to ratification.

All of what is now the State of Tennessee had been known a few years before as the Washington District of North Carolina. It was the first large division of Territory to bear the name of Washington.

When the final vote of the first convention was taken, 184 votes were cast against ratification, while only eighty-four votes were cast for it. An even majority of one hundred delegates, influenced by the state's rights idea and the violent opposition of Patrick Henry in the neighboring state of Virginia, opposed ratifying the Constitution until certain vital amendments were made. The convention approved a declaration of rights made up of twenty clauses and also voted to recommend twenty-six amendments to the Constitution which it had failed to accept, and then adjourned *sine die*. Only the older and more substantial sections of eastern North Carolina had been loyal advocates of ratification. As was the case in many other states, the well-to-do and substantial elements of the population favored ratification, while the other classes opposed it.

When George Washington became President, North Carolina was not a part of the Federal Union. Many of the national leaders felt that the state had acted wisely in withholding ratification until the far-reaching amendments proposed by it and other states had been acted upon by the new Congress. Jefferson himself had suggested that it would be wise for at least four states to hold aloof in order to assure adoption of the amendments which everyone conceded, by that time, were imperative.

Nevertheless, great pressure was brought to bear on North Carolina to bring it into the Union after it had failed to ratify the Constitution. George Washington made his personal influence felt upon the leaders of North Carolina during his first year as President. No doubt, also, one of the major influences was the threat on the part of the new Congress to treat North Carolina as any other independent nation and fix taxes upon all goods which might be shipped out of it into the neighboring states if it continued to hold aloof from the Union. As a result, when the second North Carolina convention met on November 21, 1789, at Fayetteville, the Constitution was quickly ratified by a vote of 194 to 77, and North Carolina became a part of the Federal Union.

The close of the drama in this early life of North Carolina came

on April 24, 1790, when for the second time its western territory, known then as the territory southwest of the Ohio River and finally as the state of Tennessee, was ceded to the Federal Government. This time the offer was immediately accepted, and Blount was appointed by Washington as its territorial governor. A Territorial Legislature was organized in 1794 and Dr. James White, the grandfather of Chief Justice Edward D. White, went to Philadelphia as its delegate to Congress. Governor Blount was succeeded in 1796 by John Sevier, who became the state's first elected governor after Tennessee was admitted to the Union as a state. The phantom state of Franklin, of which Sevier had also been Governor, had ceased to exist eight years before and finally disappeared from the dreams of Tennesseans yet under the spell of Spain, first as a result of the Jay Treaty of 1795, which opened up the Mississippi River for a limited number of years, and finally because of Jefferson's purchase of Louisiana and the port of New Orleans in 1803.

*DR. HUGH WILLIAMSON*

Dr. Hugh Williamson was the most versatile of all the five delegates chosen to represent North Carolina at Philadelphia, and was the only signer of the Constitution from that state who was not one of its native sons.

Dr. Williamson was born in West Nottingham, Pennsylvania, on December 5, 1735. He came from Scotch-Irish parents who had only come to America five years before his birth. Their journey from Ireland had been packed with thrills and horror, including an attack by pirates who held them captive for a time, and young Hugh's boyhood days were doubtless enlivened by stories of that experience. His parents were noted for their integrity, industry and frugality, and were deeply religious. Their son enjoyed in after years referring to the motto of their home, which read, "Let Others Do as They Will, But as for Me and My House, We Will Serve the Lord."

As a youth Williamson was frail. He first attended a private school at Newark in Delaware which later became the University of Delaware. He had as classmates there George Read, who became famous as a signer of both the Declaration of Independence

and the Constitution, the renowned Dr. Benjamin Rush, who won a threefold fame as physician, medical professor, and signer of the Declaration of Independence, and Charles Thomson, who was Secretary of the Continental Congress during the entire fourteen years of its existence.

Hugh Williamson was a member of the first graduating class of what is now the University of Pennsylvania, where he was awarded an A.B. degree on May 17, 1757. As a student he won distinction in English, Latin, and mathematics, and upon his graduation was employed at once as a teacher in the preparatory department of his alma mater. After a brief experience as a teacher young Williamson felt a call to preach, and after studying for the ministry in Connecticut, spent two years as a Presbyterian minister. However, at this time the religious life of the East was much stirred by the flaming evangelism of the Whitfield revivals, which failed to impress the conservative college-bred Williamson, and he soon decided to change from the profession of minister to that of physician.

Accordingly the next years of Hugh Williamson's life were spent as a medical student in London, Edinburgh, and Utrecht in Holland. After completing his course of medical studies at Utrecht he returned to Philadelphia, where he served for a time in the dual capacity of professor of mathematics in his alma mater and as a practicing physician. But his extremely sensitive and sympathetic nature rendered his life as a physician an unhappy one. In his imagination he suffered all the ills of his patients and in a few years he again changed his line of studies.

His next fields were literature and philosophy, and more especially astronomy. He made a hobby of studying the transit of Venus and Mercury, and speculated on whether the planets were inhabited. Like Benjamin Franklin he was also a special student of climate and weather forecasts. Such was the breadth of his learning that the great University of Leyden in Europe gave him the honorary degree of Doctor of Laws, and he was admitted to the Society of the Arts and Sciences at Utrecht in Holland, where he had won his medical degree.

The by now famous Dr. Williamson had a strong philanthropic bent, and he made visits to the wealthy West Indies, to England,

Scotland, and Ireland in search of financial aid for the Academy at Newark which he had attended, and for other struggling colonial schools. On his journey to England he sailed out of the port at Boston on the day its indignant citizens were pouring the historic tea into the harbor, and he was quick to suggest in his interview with the King, who responded with generous donations to his plea for funds for his schools, that a revolution irresistible and unconquerable was in the making as a result of the recently enacted American tax measures. Williamson was still in England when the Declaration of Independence was written.

Soon after his return from Europe Dr. Williamson was invited to come to Charleston, South Carolina, and join his brother in the business of shipping goods to and from the West Indies, then a profitable commercial enterprise. He accepted, and it was while aboard one of the firm's sailing vessels bound from Charleston to New York that he by accident became a guest and ultimately a citizen of North Carolina. A storm arose off its coast, where storms still blow, and the frail sailing vessel sought shelter in the harbor of the little town of Edenton near the North Carolina shore. He had literally been "blown" into the state, but it was a goodly land, and after a few days' unavoidable stay, Dr. Williamson decided to remain and become a "tar-heeler." Many of the leading men of that day lived in and near Edenton, including James Iredell, who later became a member of the Supreme Court of the United States, and the learned doctor was soon at home there.

When a smallpox epidemic arose in Edenton Dr. Williamson again became the active physician and aided in inoculating the anxious citizens. It was also the time of the close of the Revolution, when British troops were marching almost uninterrupted across both North and South Carolina. The people of those states were hungry, ill, and impoverished, and Dr. Williamson as Surgeon-General not only administered to their needs, but out of his own purse provided food and clothing for the suffering soldiers. Possibly the greatest service of his life was in the poorly equipped American camps. He nursed the wounded at Camden in South Carolina and made himself the good angel of the all but broken American forces. One of the wounded he tended, who however did not recover, was

Robert, the older brother of Andrew Jackson, a future President of the United States. When advised against going into the warring sections Dr. Williamson said, "If I have lived until our flag will not protect its own people, I have outlived my country, and in that case I have lived a day too long."

Dr. Williamson had won the confidence of his new neighbors, and he was soon thereafter elected not only to the North Carolina legislature but also as a delegate to the all but defunct Continental Congress. When delegates were chosen from a number of states in September, 1786, to go to the Annapolis Trade Conference, the forerunner of the Constitutional Convention, Dr. Williamson was selected by North Carolina to represent it, though he failed to arrive in time to take any part in the conference. The business life of the colonies was all but demoralized as a result of the paper money craze which was sweeping through many of the states, including his adopted state, and Williamson as a business man and political philosopher was convinced of the unhappy results of such a course. It was the time of our first great depression, the spirit of inflation was in the air, and much concern was felt for the future of the united colonies.

The versatile Dr. Williamson was representing North Carolina in the Continental Congress when he was chosen as one of its five delegates to the Philadelphia Convention. He had previously served in the Continental Congress from 1782 to 1785. He went to the Convention as the substitute for Willie Jones, who had declined to go. Dr. Williamson was not a conspicuous member, measured either by the number of addresses made or the leadership he showed. He belonged to that group of solid, educated and conservative members who weighed the proposals made, remained faithful to the end, and then joined in signing the great document which they had helped to make.

The full weight of Williamson's influence was however exerted in behalf of the ratification of the Constitution. Since those who opposed it were at first in the majority in North Carolina, much work was necessary on the part of those who undertook the task of converting their local-minded neighbors to a realization of the benefits to be derived from a strong central government.



As a reward for his conspicuous public services the eastern section of North Carolina in which Edenton was located selected Williamson as its first representative in the new Federal Congress which met in New York City. Dr. Williamson proved to be an ardent supporter of the administration of President Washington. He was no orator and seldom spoke on the floor, but historians and his associates record him among the substantial members of that first Congress, and as not only a pure patriot but a man of patience and good judgment. Thomas Jefferson did not hesitate to pronounce him a useful member of Congress, and one possessed of an acute mind who was ardent and attentive at all times to his duties. He served for only two terms, from 1789 to 1793, after which he retired from active political life.

The retirement of Dr. Williamson from further political activity at the age of fifty-five is directly traceable to the charms of a young and attractive New York lady who bore the name of Maria Apthorpe. He became acquainted with her while serving in New York in the Congress, and as a result of his marriage was persuaded to quit public life, leave his adopted state of North Carolina and locate in New York. North Carolina saw him go with regret, and its legislature voted him resolutions of thanks for his untiring services on its behalf.

The latter years of Dr. Williamson's life were devoted to the life of a retired statesman, learned scientist, man of letters, and cosmopolitan scholar. His interests were varied, and included further philosophical and advanced medical studies. For a time he served as a member of the Board of Trustees of the College of Physicians and Surgeons, and he was much interested in the work of the New York Historical Society. As an outgrowth of his studies he wrote a two-volume history of his adopted state of North Carolina, and also published a book on climate.

He was stricken with his last illness while horseback riding with the daughter-in-law of the late Alexander Hamilton, died on May 22, 1819, and was buried near Hamilton in the Trinity Churchyard in New York. There were no Williamson heirs. Two sons were born to him in his latter years, but one child died in infancy and the other early in his young manhood. The old Federalist party

had drawn its last breath in the Presidential Campaign of 1816 and the good doctor was one of its last defenders.

*WILLIAM BLOUNT*

William Blount, one of the three signers of the Constitution from North Carolina, was one of the several signers of that document who after a great public career came to an unhappy end politically.

He had a very striking personality. He was a man of wealth, culture and breeding, with a natural dignity which won for him the respect of high and low alike. He lived in a turbulent frontier section during his latter years, but represented the fine type of spirited gentlemen who did so much in setting the ships of state upon an even keel during the strenuous early days of the Republic. William Blount was not one of the great men on the floor of the Philadelphia Constitutional Convention, but he was, after the Convention, one of the most useful in the work of building a new commonwealth out of what had only recently been a wilderness and the home of savages.

Blount was a native of Windsor, Bertie County, North Carolina, where he was born on March 26, 1749. He was one of thirteen children several of whom became men of prominence. Two of his brothers as well as William himself followed in their father's footsteps and served in the North Carolina House of Commons, the lower branch of the North Carolina colonial legislature. One of his brothers, Thomas Blount, later went to Congress from North Carolina, died in Washington, and is now buried in the old Congressional Cemetery where so many early American statesmen rest. At that time it was difficult for the bodies of members of Congress who died in Washington to be transported back home, and consequently near a hundred one-time members of the House and Senate now rest there. This at one time included two Vice-Presidents of the United States, Clinton and Gerry. The body of Clinton was re-interred at his home town in Kingston, New York, early in the twentieth century.

The Blount family line can be traced back to early English history. It is said that the name was originally "Le Blount," and that the first record of the family is found in Normandy, whence came

the founder of the English branch of the family with William the Conqueror in 1066.

While William Blount was not a college graduate he had the best of local educational advantages. He entered the Revolutionary service in the early days of the hostilities, and sustained the old Norman family tradition for bravery and patriotism. In 1780 he was sent to the North Carolina House of Commons and served there for four years. In the course of this service he voted in 1784 in favor of the Act ceding to the Federal Government the western portion of North Carolina now embraced in the state of Tennessee. But the Act required the acceptance of the grant by the national government within a two-year period, and when the latter failed to do so immediately, North Carolina rescinded its grant. Confusion reigned in this sparsely settled region. Its inhabitants felt themselves a people without a country, and in self-protection organized the short-lived and turbulent state of Franklin. The new state was never given formal recognition, and the clause in the new Federal Constitution adopted in 1788 which refused recognition to any new state without the consent of the state of which it originally had been a part was the direct result of the dispute over the status of the ephemeral state of Franklin.

In 1782 Blount was chosen as one of North Carolina's delegates to the Continental Congress, and took part later in the ratification of the Treaty of Peace between the United States and England at the close of the Revolutionary War. He was again a member of the Continental Congress at the time he served as a delegate to the Constitutional Convention, and served on the committee of the Congress which formally arranged for the calling of the Constitutional Convention when it was evident that such a convention would meet in any event.

He was not a conspicuous member of the Philadelphia Convention. He had been selected to go in place of Governor Richard Caswell, who had declined the appointment. Though Blount affixed his name to the Constitution, he did so reluctantly and only after it was evident that it would be overwhelmingly approved by the other members of the Convention.

It was a disappointment to him not to be chosen as one of

the first two United States Senators from North Carolina when Johnston and Hawkins were selected. He had a flair for politics, was wealthy, and felt himself entirely worthy of that high position. Two years later he accepted the appointment from President Washington as Territorial Governor and Superintendent of Indian Affairs in what is now Tennessee, which had again been ceded to the new Federal Government by North Carolina in 1790. The territory then bore the rather ambitious name of "The Territory Southwest of the Ohio River," in contrast to the other great western territory previously acquired from the states known in history as "The Territory Northwest of the Ohio River."

Blount arrived at Knoxville for the purpose of carrying out his duties on August 7, 1790, and thereafter played a large part in laying the foundation of the future state of Tennessee. As Territorial Governor for nearly four years he, together with the three territorial judges, largely dictated the government of that wilderness section and the relations with its Cherokee Indian inhabitants, until the territorial legislature was organized in 1794. The section had a single territorial delegate in Congress for the following two years, James White, of Middle Tennessee, the grandfather of Edward D. White, who died as Chief Justice of the Supreme Court of the United States in the first quarter of the twentieth century.

One of the territorial judges sent to Tennessee to serve with Blount at the suggestion of George Read, of Delaware, was James Anderson, of New Jersey, who later served for fifteen years as a United States Senator from Tennessee and was the first Comptroller of the United States Treasury. One of his public acts as comptroller was to sign and deliver to Lafayette on Lafayette's memorable visit to America in 1824 and 1825, a check of the United States Government for \$200,000 as a gift of appreciation for his services during the Revolution. Lafayette also received a gift of 24,000 acres of public land located in Florida where Tallahassee, the capital of Florida, now stands. A Tennessee county today bears Anderson's name. Outlaw Anderson, his son, succeeded Hugh Lawson White as a Senator from Tennessee in 1840.

William Blount was chosen as the president of the convention

at Knoxville selected to draft Tennessee's first constitution, on February 6, 1796. The name Tennessee was chosen after a name commonly used in the region, being that of one of the counties located in the state's central section, the name of an Indian village, and also of the river which twice crosses the state's borders. The region was admitted to statehood later in the same year.

When the time came for the new state's first legislature at Knoxville to choose its first two United States Senators, William Blount was easily elected as one of them. His ambition for the position, which had been thwarted in North Carolina a few years before, was now realized. His colleague was William Cocke, who had been a party to the plans for the new state of Franklin and who had gone to New York as the representative of that short-lived state to beg its recognition by the Continental Congress.

The career of William Blount as Senator was as tragic as it was brief. He had been a member of the Senate less than a year when he was expelled by a vote of twenty-five to one. He was the only member in all the Senate's history to be expelled after having been duly sworn in and after having served for a time as one of its members. He was expelled on the charge of violating as a Senator a treaty made by the United States with another nation, the treaty between the United States and Spain known as the Treaty of 1795. That treaty attempted to settle, provisionally at least, the acute issues which had existed between the two countries since the signing of the Peace Treaty between England and the United States in 1783. The principal issue involved the right of inhabitants of the United States to the free use of the Mississippi and the rivers south of what was then the American boundary line. That boundary ran along Spanish West Florida, being what is today the southern boundary of the states of Mississippi and Alabama. Another feature of the treaty provided for a strict commitment on the part of each country to avoid any sort of interference with the internal affairs of the other, especially in their dealings with their Indian inhabitants. Blount indiscreetly wrote a letter to one James Carey, an Indian interpreter living in East Tennessee, in which he made vague inquiries about the possibility of the Indians lining up with British soldiers in East Florida for the pur-

pose of driving the Spanish out of the West Florida territory. This was, of course, clearly in violation of the treaty, and when President John Adams sent the letter to the Senate accompanied by a grave message, the decision to expel Blount and thereafter to impeach him quickly followed. Senator Tazewell, of Virginia, after whom a prosperous town in Virginia is named, was the only Senator to vote against Blount's expulsion.

Before the trial on the impeachment charges Blount returned to Tennessee and was received, not as a disgraced public servant but as a public hero. James White, who was then serving as a State Senator and as Speaker of the Tennessee Senate, resigned both positions in order that Blount might succeed him in both of them. This second James White was the father of Hugh Lawson White, who later represented Tennessee in the United States Senate and was a candidate for President in 1836 when Van Buren was elected. When the Sergeant-at-Arms of the Senate came to Knoxville to bring Blount back to Philadelphia for trial before the Senate, he found that Blount was not only among his friends but protected by them. Blount graciously entertained the marshal, but politely refused to return with him for trial. It may be frankly said that Blount's home people, who had no conception of the seriousness of the diplomatic break he had made and cared less, were in hearty sympathy with any plan which would have aided in driving the unpopular Spanish out of Florida, regardless of its consequences from a diplomatic standpoint.

The Senate's trial of Blount was conducted without the accused's personal presence. James A. Bayard, of Delaware, the son-in-law of Richard Bassett, a fellow member of Blount at the Philadelphia Convention ten years before, led the prosecution. Jared Ingersoll, the great Philadelphia lawyer, and A. J. Dallas, who served later as Secretary of the Treasury in the cabinet of James Madison, the father of George M. Dallas who was Vice-President under James K. Polk, of Tennessee, were Blount's attorneys. Senator Pierce Butler, of South Carolina, and Thomas Blount, his brother, were his bondsmen. Both Ingersoll and Butler had served with Blount at Philadelphia.

But the trial came to an early and unexpected end. Almost im-

mediately after the trial opened the presiding officer, Thomas Jefferson, ruled that inasmuch as Blount was no longer a member of the Senate, having been expelled therefrom, the Senate had no jurisdiction to impeach him for acts done as a Senator. Thus ended the short but turbulent senatorial career of William Blount.

What he might have continued to be in Tennessee politics it is hard to state, although early historians of Tennessee declare that he would have succeeded Sevier in the Governorship of the state had his career not been cut short by his death, which occurred at Knoxville on March 21, 1800. He was buried and his body now rests there in the cemetery of the First Presbyterian Church, with nothing on his simple grave to suggest any of the high public positions he once held. The bodies of none of the signers of the Declaration of Independence now rest in the soil of Tennessee, and Blount is the only one of those who signed the Constitution to be buried there. His fine home at Knoxville, which dates back to the days of his territorial governorship, was standing and used as a historical shrine in 1936.

The family line of Blount continued to be a notable one and still influences Tennessee history. Blount's wife, whose maiden name was Mary Grainger, has both a town and a county in Tennessee named in her honor, the town of Maryville, in Blount County, and Grainger County. Blount himself, in addition to the County of Blount, has the small town of Blountville to perpetuate his name. He was one of the founders of East Tennessee College at Knoxville, out of which grew what is now the University of Tennessee. One of his sons, Grainger Blount, succeeded Sevier as an East Tennessee Congressman on Sevier's death in 1815. A daughter became the wife of General Edward P. Gaines of the United States Army. A younger half-brother, Wylie Blount, who served as his private secretary when Territorial Governor, later became a member of the Supreme Court of Tennessee, and was for six years its Governor. Hon. Hill McAllister, of Tennessee, who was elected Governor in 1932, and again in 1934, was a great-great-grandson of Wylie Blount, and was probably the only recent gov-

ernor who could boast of being a descendant of his state's first chief executive.

*RICHARD DOBBS SPAIGHT*

Richard Dobbs Spaight, one of the three North Carolina signers of the Constitution, was also one of its two native sons in the Philadelphia Convention, and one of the youngest men who signed the Constitution, being scarcely more than twenty-nine years of age when the Convention opened.

Spaight was a native of New Bern, North Carolina, where he was born March 25, 1758. The Spaight family was closely connected with the old royal government in North Carolina, the mother of Richard Dobbs Spaight being a niece of a former royal governor of North Carolina, and his own father was for a time a royal clerk, a position similar today to the office of Secretary of State. Richard Dobbs was orphaned when eight years of age and one year later was sent by his relatives to be educated in Ireland and Scotland, the native land of his ancestors. There he spent twelve years among scenes familiar to them in the land of Bobbie Burns and Tam O'Shanter, his education being completed at the University of Glasgow.

Young Spaight found his native North Carolina stirred by the horrors of war when he returned home in 1778. It was the year of Valley Forge, and a crisis was at hand. He at once chose the side of the colonists, though a kinsman, Captain William Spaight, had fought on the English side in the battle of Bunker Hill earlier in the war. He was only twenty years of age, but was selected to serve as aide-de-camp on the staff of General Richard Caswell, one of the great war leaders of North Carolina, who stubbornly resisted the British efforts in that state.

In 1781, when the battle of Yorktown had been fought and the war was over from an English view-point, Richard Dobbs Spaight, then twenty-three, was elected a member of the North Carolina House of Commons. After two years' service during which he served as Speaker, he was selected to go for three years as a representative of North Carolina in the Continental Congress, where he was serving



as a young man twenty-five years of age when George Washington surrendered his commission at Annapolis.

His next important public service was as a member of the Constitutional Convention. The most fundamental contribution he made there was as the author of that provision in the Constitution which provided for members of the United States Senate to be elected by the State Legislatures. He opposed his colleagues when a majority of them voted with the small states of the North in favor of equal representation in the Senate for all the states. Spaight was also a strong advocate of seven-year terms for both the President and United States Senators. Spaight was unsuccessful in his ambition to be one of his state's first United States Senators, just as he had failed the previous year in his race for Governor.

When the fight for the ratification of the Constitution began in North Carolina, Spaight was one of the leaders who aided in finally securing it. Through his influence, President Washington was persuaded to stop in North Carolina when he made his long journey to the South early in his administration. While on that journey Washington met with many of the leaders of the state, an influence which was most important in securing North Carolina's ultimate ratification.

After serving again in the House of Commons, Spaight was chosen as Governor of North Carolina in 1792, being its first native son to occupy that office, which he held for three years. North Carolina's signers of the Declaration of Independence had all been adopted sons.

When the Jeffersonian party arose in power after the break between Jefferson and Hamilton in the cabinet of Washington, Richard Dobbs Spaight became a follower of Jefferson and one of his leaders in North Carolina. He was elected to Congress in 1798, where he served until March 4, 1801. It was on that day Jefferson became President after the long-drawn-out and uncertain contest with Burr in the House of Representatives. Spaight as a member of the dying Congress had taken an active part in the Jefferson-Burr contest, where he was a loyal supporter of Jefferson.

When he left Congress he returned home and was soon thereafter

elected to the State Senate. The life of this genial, accomplished, and well-bred North Carolinian came to a sudden end on September 6, 1802, as the result of a duel with John Stanly, of Craven County, his successor in Congress. The duel was said to have been an outgrowth of their previous political rivalry. Some critics have blamed Spaight, who was known according to the biographers of that time as a peace-loving individual. In less than two years Hamilton, of New York, another signer of the Constitution, was doomed to die at the hands of a fellow duelist. So the North and South alike lost a signer of the Constitution by that barbaric method. Button Gwinnett, of Georgia, one of the fifty-six signers of the Declaration of Independence, one year after affixing his name to that instrument, was also killed in a duel with General Lachlan McIntosh, a fellow Georgian and officer in the Revolution whose name is on one of the shields of honor in the Chapel at West Point.

Edward Stanly, the son of John Stanly who killed Spaight, also went to Congress from North Carolina. He later moved to California, where he was an unsuccessful candidate on the Republican ticket for Governor. When the Civil War came on, it was Edward Stanly, the son of the slayer of Spaight, one of North Carolina's three signers of the Constitution, who was sent back to eastern North Carolina by Abraham Lincoln to serve as its military governor with the rank of Brigadier General. When the war was over he returned to California.

While Spaight was only forty-four years of age at the time of his death, he had been in public life since early manhood and had won high renown. His descendants also have won honors for the family name. One of them, his son and namesake, like his father went to Congress from North Carolina and served as Governor of that State. His nephew and namesake, Richard Spaight Donnell, also became a member of Congress. One of the collateral descendants of the Spaight family, J. W. H. Roberts, of Greene County, North Carolina, served as a government attorney during the administration of Franklin D. Roosevelt.

Richard Dobbs Spaight, Sr., was buried on the family estate called "Clermont" in Craven County, North Carolina.

*WILLIAM R. DAVIE*

William R. Davie was one of the few foreign-born delegates from a southern state to attend the Convention at Philadelphia. He was born at Egremont, Cumberland County, England, on January 20, 1756, and was sent to America when a small lad of eight years to live with an uncle, William Richardson, a Presbyterian minister, after whom he was named. The home of the uncle was near Charlotte, North Carolina, not far from where Andrew Jackson was born a few years later. The uncle through thrift and industry in worldly affairs had accumulated a large estate, which he left on his death to his brilliant nephew and namesake.

After being prepared for college, young Davie was sent to Nassau Hall, now Princeton University, where he graduated in 1776 as the first honor man of his class. The war of the Revolution was then on, the Declaration of Independence was about to be written, and young Davie lost little time in entering the military service against his mother-land.

In his home section of North Carolina the highly provocative Mecklenburg Declaration had already been read, and Davie, on his return to North Carolina from college, spared neither himself nor his estate in assisting the cause of the Revolution. The South had not at first felt the severe strain of the war as had the New England section, where hostilities had first begun, but toward the end, after victories had been won in the North, the people of North and South Carolina tired from the long strain. Davie himself suffered the humiliation of being present when Charleston surrendered to the enemy on May 12, 1780. The revolutionary cause seemed all but hopeless, until the tide was finally turned at King's Mountain in western North Carolina, the prelude to Cornwallis' surrender at Yorktown not long after. There were Tory uprisings here and there, and young Davie was one of the leaders in the effort to overcome such of the North Carolinians as were inclined to put their sympathies upon the British side. He began his military service with the rank of captain, ended it with the rank of major, and carried a thigh wound through life as a result of his war experiences.

After the war was over this capable and attractive young man,

whose tall, elegant and graceful figure made him an impressive member in whatever society he moved, began the practice of law, in which he won great renown. He had studied law at Salisbury, North Carolina, where Andrew Jackson had also pursued his limited legal studies. He was known not only as a great criminal lawyer with a large practice at all the leading court centers, but as an expert on wills.

Like most ambitious young men of his day, Davie served in the North Carolina legislature, and was known there as one of its first orators. He had a fine mellow voice, and his style was the lofty and inspiring type of public speaking much admired in his day. He was a member of the North Carolina Assembly when the state ceded the territory later known as Tennessee to the Union, and was one of the leaders in promoting the transfer.

When the North Carolina delegation was chosen to go to Philadelphia, Davie was one of the five men first selected to go. He was at that time only thirty-one years of age, and was a modest member of the Convention who kept his counsel while lesser men held the floor. The most notable work he did there was in persuading the North Carolina delegation to vote with the small states of the North on the question of equal senatorial representation, thereby aiding in one of the great compromises of the Convention. Only his strong personality persuaded his delegation, which had formerly voted with the large states, to change its vote and thereby make effective the much desired equality of representation in the Senate.

It was unfortunate for Davie that the urgent requests of some of his many prominent clients in North Carolina called him home from Philadelphia before the Constitution was finally signed. He was one of the greatest of the delegates who attended the Convention whose names do not appear among the signatures to the Constitution.

When the bitter fight over ratification arose in North Carolina, he was one of the strong influences who stood almost alone at times in fighting out the question of ratification or no ratification. The great debate of that convention was built around the interpretation of the opening words in the preamble of the Constitution,

"We, the people." The local leaders opposed to a strong national government thought them highly significant of an intention to create not merely a confederacy of states, but a national government which would be paramount to their own authority.

Like so many other college men who went to Philadelphia, Davie had a great part in the building up of the educational system of his own state. He was one of the founders of the University of North Carolina, one of our four oldest state colleges. As Grand Master of the Masonic Lodge he had an important part in the ceremonies at the laying of the corner-stone of the old East building of the University on October 12, 1793. He was also present when the South building there was begun on April 14, 1798. A fine oil painting of him now hangs on the walls in one of the old buildings as one of the early benefactors of the institution. He was a frequent visitor at the college and served on the first board of trustees. One of his habits was to visit the classrooms at examination time and encourage the anxious students as they faced their intellectual Waterloos. He was always a guest at commencement time, where he was the object of great affection on the part of both students and faculty.

The greatest national service rendered by Davie was as a member of the commission chosen by John Adams in place of Patrick Henry, who had refused the appointment, to go to France when America seemed about to be involved in a war with that country. Davie was then a brigadier-general on the staff of George Washington, who had reluctantly yielded to Adams' urgent request and had again become the head of the American army, and he was also Governor of North Carolina. He had held the office of Governor for only six months when he undertook the mission to France, and resigned that office in order to do so.

In company with Oliver Ellsworth, of Connecticut, who had been a fellow delegate at the Philadelphia Convention, Davie went to France late in 1799. The journey was a rough one, not only across the Atlantic in mid-winter, but by land across Spain, where much hardship was endured as their carriage found its way over rough and snow-covered roads. Through the successful work of that commission, which also included Vans Murray, the American minister to Spain, war was averted. History is too prone

to exploit the military achievements of our leaders to the exclusion of the great work done by our diplomats in less spectacular fields.

Davie had a right to expect not only a warm reception when he returned to North Carolina, but any reasonable honors which he might ask of his home people. He had taken part in a far-reaching work of peace which not only saved this country from war, but an indirect outcome of the labors of his committee was the sale on September 30, 1800, of the Louisiana territory to France by Spain, a transfer which made possible Jefferson's vitally important Louisiana Purchase in 1803.

In response to many who felt the need of his services, Davie upon his return from France announced himself as a candidate for Congress. But he was not democratic in either his manner of living or in his politics. He was by birth and breeding a real aristocrat. He was one of the comparatively few college-bred men in his adopted state, and was doomed to fare badly in his efforts to win further elective political office.

Davie was opposed in his campaign for Congress by Willis Alston, also a Princeton man, one of whose claims to fame was that he was a nephew of Nathaniel Macon, of North Carolina, one of the leaders of Congress and once a Speaker of the National House of Representatives.<sup>2</sup> The Davie-Alston campaign soon became a clear-cut issue not only between Federalists and Republicans, but between the aristocracy and the democratic masses. The democratic masses won. Tradition has it that one of the campaign stories which did not make votes for Davie was that he had brought back from France certain be-flowered household articles which did not appeal to his robust frontier constituents, who felt that their interests would best be served by one accustomed to a homelier domestic establishment.

As a result of this defeat, Davie left North Carolina in disgust, and moved across the state line to his estate called "Tivoli," which he had inherited from his preacher-uncle, located on the Catawba River in Lancaster County, South Carolina.

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<sup>2</sup> Randolph-Macon College, in Virginia, was jointly named for Nathaniel Macon and John Randolph, of Roanoke.

The remaining years of this able man's life were spent as a country gentleman on his South Carolina estate. The only office he again held was that of president of the South Carolina Agricultural Society. When the War of 1812 arose, James Madison tendered to him and the Senate confirmed his appointment as major-general in the United States Army, a position which was accepted by William Henry Harrison when Davie declined it. Harrison in turn was succeeded by Andrew Jackson, who had gone from his birthplace near Davie's home in North Carolina to Tennessee when a young man of twenty-one years, and who while holding that position, won the military glory which made him also a national hero and like Harrison a future President of the United States.

The Davie farm was noted for its fine race horses. One of them, known as "Sir Archer," was bought by him for \$5,000 at Carter Hall, Clarke County, Virginia, where his friend, Edmund Randolph, whom he had known at Philadelphia, spent his last unhappy days. Davie's home was among the many destroyed by Sherman on his well-known march to the sea during the Civil War. His estate was in the courts for seventy-two years after his death, and was not finally adjusted until 1892, one hundred and five years after the Convention at Philadelphia.

His family was a large one. He married a Miss Jones, of Halifax, a near relative of Willie Jones, an early hero of North Carolina who was, like Davie, a citizen of Halifax when the ratification issue arose in North Carolina. Jones had refused to go as a delegate to Philadelphia, and they, Davie and Jones, neighbors and related by marriage, were on opposite sides in the fight for ratification.

Davie died on November 18, 1820, and was buried in the Waxhaw Church graveyard in Lancaster County, South Carolina. The inscription on his tomb reads: "A great man in an age of great men. In life he was admired and beloved by the virtuous and the wise. In death he has silenced calumny and called envy to mourn."

A North Carolina county bears his name.

#### ALEXANDER MARTIN

Alexander Martin, of North Carolina, like his fellow delegate

Davie at Philadelphia, was not present when the Constitution was signed, but unlike Davie, he did not approve of the work of the Convention. He was an extreme advocate of the doctrine of states' rights, was out of harmony with most of the things done by the Convention, took no active part in its deliberations, went home early and never returned. Nevertheless, while not a great or important figure, as that of an ex-governor of his state Martin's attitude is worthy of consideration.

After the new government under the Constitution was established Martin continued to be out of sympathy with the course of national events. Washington refused to name him as governor of the "Territory South of the Ohio River" in 1790 when Patrick Henry recommended him for the post, and chose William Blount instead. During his one term in the United States Senate, from 1793 to 1799, he changed his views and became an outspoken Federalist as did his friend Patrick Henry. But his change of heart and his support of the Alien and Sedition Acts ended his Senatorial career when the anti-Federalist Jeffersonians were swept into power.

Martin came of a family of much character and intelligence. He was born in New Jersey in 1740 and, like Davie, was educated at Princeton, where he graduated at sixteen years of age. Later in life, like many of the sons of Princeton who won distinction in our early political life, his college conferred on him the honorary degree of Doctor of Laws. One of his brothers, Thomas Martin, also attended Princeton and afterwards located in Orange County, Virginia, where he became the local rector and tutor to young James Madison. The Martin family had come to Virginia from New Jersey a few years before.

To young men of that day the far South seemed the land of promise, and after leaving college Alexander Martin moved down into Guilford County, North Carolina, near Greensboro. There he identified himself with local politics and was sent to the House of Commons, and later for five years to the State Senate where he became its Speaker.

Unlike Davie's, his Revolutionary War record did not enhance his fame. He saw military service first as lieutenant-colonel and later as colonel of the Second North Carolina Regiment and took part in



the battles of Germantown and Brandywine, but there is a tradition that when the enemy attacked at Brandywine Martin fled and climbed a tree in fright.

Despite the charge of cowardice in battle, he returned to North Carolina and again became active in Revolutionary politics. He was a state senator from 1779 to 1781, when he became acting governor when the state's elected governor was captured and held a prisoner of war by the British. The following year, in 1782, he was regularly elected as governor and served for two more years. Five years later he became governor for another three years. Like Davie, he was also a trustee of the University of North Carolina.

After leaving the United States Senate in 1799, Martin retired to his estate, "Danbury," on the Dan River in Stokes County, North Carolina, where he lived until his death on November 10, 1807. He was buried in a tomb cut out of the side of a bluff on the Dan River near his home. The grave was above the usual high water mark, but the waters of an unprecedented flood overflowed the spot and carried away the body, which was never recovered.

### XIII

#### SOUTH CAROLINA AND THE CONSTITUTION

**S**OUTH CAROLINA was the only Southern state represented at Philadelphia whose delegation remained on the Convention floor until its close and unanimously signed the Constitution, and it was one of the key states when the fight for ratification began. There was a vague hope among some of the leaders in the fight to defeat ratification that a Southern confederacy might be formed independent of the rest of the country. Patrick Henry was one of the southern group who discussed such a plan and many of his followers in Virginia and North Carolina openly favored it. When Georgia in the extreme South and Maryland on the northern boundary of the South approved the Constitution the threat of secession was largely removed, but anxious eyes were still turned to North and South Carolina. If one or both of those states were to fall in line for ratification, plans for a Southern confederacy would go a glimmering.

The eyes of the nation were therefore upon South Carolina when the legislature of that state debated the question of calling a convention to act on the proposed Constitution. Rawlins Lowndes, a distinguished South Carolinian, whose son, William, a great figure of a later day, succeeded Rutledge as Governor in 1778, was the leader who tried to block the plans for holding a convention. He was undoubtedly sincere in his position. Lowndes concluded his long attack upon the Constitution with the statement that he wished no other epitaph upon his tomb than the simple words: "Here lies the man who opposed the Constitution, because it was ruinous to the liberty of America." Both the Pinckneys and John Rutledge, all delegates at Philadelphia, argued for holding the convention. When the vote was taken, the forces working for a convention had seventy-six votes and the opposition seventy-five.

In the ratification convention which followed it was the city and coast section against the rural and highland districts, as was the case

in most other states. The district known as the district east of the Wateree voted nine to one against ratification; District 76, the section inhabited by the ancestors of John C. Calhoun, one of whom sat in the convention, was eight to one against ratification; the lower district between Broad and Saluda Rivers was five to one against the Constitution; the district of Saxe-Gotha was six to one; the upper Spartan district—five to one; the section called the New Acquisition—ten to one; Chester County—four to one against ratification; St. Bartholomew's district also opposed ratification.

When the convention met in Charleston on May 12, 1788, the anniversary of the fall of Charleston eight years before, Governor Thomas Pinckney, the famous brother of General Charles Cotesworth Pinckney, was elected chairman. Young Charles Pinckney, who had presented a plan for a constitution and otherwise made himself active at the Philadelphia Convention, made the opening address before the ratification convention as he had done before the legislature when it debated the question of calling a convention.

When the convention had been in session for eleven days the final vote was taken on May 23rd, and 140 to 74 voted in favor of ratification, despite the fact that General Sumter made an effort to postpone the convention until Virginia had acted. The result brought joy to all who were fighting for ratification and the hopes of Patrick Henry and others who had a vision of a Southern confederacy were immediately dashed to pieces.

During the drafting of the Constitution the South Carolina delegates succeeded in keeping out any suppression of human slavery by constitutional edict and in a clever deal with the delegates from the New England States, the importation of slaves was legalized by the Constitution for twenty years more. In addition, a fugitive slave law was recognized even if its enactment and re-enactment caused the death knell to the future ambitions of more than one national figure, including Webster, a great expounder on the Constitution.

It remained for the same slavery issue shunned at first by the Convention at Philadelphia and then compromised by it to result in a Southern confederacy nearly seventy-five years later when the smoldering flames of indignation against human slavery quenched



*J. Rutledge*



*Charles Pinckney*



*Jusu Dittler*



*Charles Pinckney*



for a while by the waters of compromise and evasion at Philadelphia broke out anew and a great civil war followed an attack made upon a South Carolina fort, which bore the name of Sumter in honor of the Sumter who fought the ratification of the Constitution in 1788.

South Carolina historians refer with due pride to the fact that it was the only southern state represented in the Stamp Act Congress in 1765, and that two of the three committee chairmen appointed at that Congress—Thomas Lynch and John Rutledge—were from the Palmetto State.

### JOHN RUTLEDGE

John Rutledge, of South Carolina, who served as chairman of the Committee on detail in the Convention which wrote the Constitution, was one of the ablest of the southern delegates in attendance at Philadelphia.

He was a native South Carolinian, having been born in Charleston in September, 1739. That city was his home during his entire life and there his body now rests.

The father of John Rutledge was a native of Ireland, who died ten years after his marriage to the mother of John Rutledge, leaving her a widow, twenty-five years of age, with five children to be raised and educated. John, the oldest and the father's namesake, was his mother's junior by only fifteen years.

Unlike many of his great colleagues in public life, Rutledge was not the product of a great literary college. His academic education was obtained at the hands of David Rhine, a famous tutor of his day in Charleston, and the rector of the local parish of which his mother was a devout member. Under his guidance he became a fine classical student and an adept in Latin and Greek.

After completing his preliminary work for law under James Parsons of the same city, his young mother sent him and his brother Edward to London for their legal education at the middle Temple, where Blair, Dickinson and Houstoun, of Georgia, fellow delegates to the Constitutional Convention, also studied. While in London the young Rutledge brothers listened to the elder Pitt speak on politics, and to the majestic performances of Garrick, the great

actor. Both were inspired, and it became their ambition to become great statesmen and orators.

The reputation of John Rutledge as a promising barrister reached Charleston before his return, and when his sailing vessel approached the home harbor the representative of a leading Charleston family came out to meet him and engaged his services in a breach of promise suit which involved prominent members of local society. He was paid five hundred dollars in advance for this his first case. The record he made in the trial which followed, and the presentation, by him, of his fee to his widowed mother, won for him immediate popularity, and success at the bar rapidly followed. In a short time he was chosen as the Royal Attorney General of South Carolina, which position he filled acceptably. At that period of his life he also wooed and married Miss Eliza Grimke, of Charleston.

The public career of this able young man began on a national scale when he was sent as one of the three delegates from South Carolina to the Stamp Act Congress, which met in New York on October 7, 1765, under the leadership of James Otis, of Massachusetts, whom John Adams called the firebrand, whose Writs of Assistance set ablaze the revolutionary spirit among the colonies. It was the misfortune of Otis, as well as of Rutledge, to suffer a mental eclipse later in life. The son of Otis was the first secretary of the United States Senate when it was organized in April, 1789.

South Carolina was the only southern state represented in the Stamp Act Congress, and that state was signally honored when John Rutledge, its brilliant young delegate, then only twenty-six years of age, was made chairman of one of its important committees. He had among his associates there John Dickinson and William Samuel Johnson, who later were his colleagues in the Philadelphia Convention.

Both John Rutledge and his brother Edward went as delegates from South Carolina to the first Continental Congress, Edward Rutledge, who was only twenty-five years of age at the time, being the baby member of the Congress.

There John Rutledge again served with John Dickinson, and aided in the preparation of the message sent by the Congress to

the English king in an effort to find the road to peace and harmony with the mother-land. He spoke with such eloquence on the floor of the Congress that Patrick Henry, whose name was and is a synonym for oratorical excellence, pronounced him the greatest among all the orators of that historic Congress, and John Adams marveled at his rapid flow of words. Another delegate was Gadsden Lynch, the son of one of Rutledge's colleagues in the Stamp Act Congress.

When Rutledge, his brother and other colleagues returned to South Carolina at the close of the first Congress a banquet was tendered them and he was hailed as one of the rising stars of the state.

When independence was proclaimed in 1776 and South Carolina, after much hesitation, established home rule, John Rutledge was chosen as its chief executive with the title of President and commander-in-chief, a position which he held for two years. It was a critical era, not only for the nation but especially for South Carolina, where the spirit of independence had developed slowly. He himself was slow to take up the war against England, for it was there he had studied as a law student, and close ties of blood and affection also bound him. However, as President of the state he did all in his power to protect his people, and as commander-in-chief of the state's troops led them gallantly in its defense. While he was beginning his service in the home state, his brother Edward, who became the state's Chief Executive several years later, was winning renown by his further work in the Continental Congress, which was crowned by his signing of the Declaration of Independence. The brother John while a member of Congress in 1776 was not present when the Declaration was signed.

When a change in the Constitution of South Carolina was made after Rutledge became President, and the title of President was changed to that of Governor, he resigned his office and Rawlins Lowndes, who was destined ten years later to become the leader of the forces in South Carolina opposed to the ratification of the Constitution, was chosen as his successor.

One year later, in 1779, Rutledge was chosen to succeed Lowndes as Governor, and virtually became dictator. The state had changed



from a state of prosperity to one of fear and want. British troops were overrunning it, the spirit of the people was broken, and defeat loomed large everywhere, north as well as south. Charleston fell into the hands of the enemy and Rutledge, as Governor, had to go north to seek help in driving it from his state. It was not until the victory over Cornwallis at Yorktown that hope came again to the South.

After leaving the governorship on January 29, 1782, John Rutledge was sent once more to the Continental Congress, where he was again an outstanding leader. One of his acts of service was to go with Clymer and urge Virginia to take more interest in Federal affairs. He was the brilliant orator, whose commanding presence and deep earnestness made a profound impression on the Virginia legislators. On March 2, 1784, he was made Chancellor of South Carolina, the highest court of his state, and was occupying that position when he was chosen as one of the South Carolina delegates to the Constitutional Convention. He was one high judicial officer who was ranked even more highly as an orator than as a writer. Nevertheless he looked and acted the part of a judge. In appearance he was tall, slender, and well-formed, with piercing dark eyes, firm mouth, and hair combed back. He was grave, dignified, learned, allowed no familiarities, and no man of his day was of a more independent spirit.

He was a vital member of the Convention which wrote the Constitution. He not only served as chairman of the Committee on detail, one of the major committees in importance and influence, but was a factor in the adoption of many salient features of the Constitution. He was the embodiment of the slavery sentiment, particularly of the South Carolina slave owners, many of whom were his personal clients, and whom he in a sense personally represented on the Convention floor, and he stood adamant against any provision in the Constitution which would have destroyed the institution of slavery. He belonged to the group of men who thought of statesmanship as the field for men of wealth and leisure who should gladly serve without compensation, and advocated that the President and other public officials serve without compensation. He also advocated the "assumption plan" for

state debts put in effect a few years later under the leadership of Hamilton.

In the Presidential election of 1788 the South Carolina electors voted for John Rutledge for Vice-President, and President Washington, who rated his abilities highly, appointed him in 1789 as the representative of the far south on the first Supreme Court of the United States, where he took the oath of office on September 24, 1789.

Rutledge had an unhappy career during this period of his life. He did not attend a single session of the Court in New York City, and after for two years making the southern circuit assigned him he resigned on February 16, 1791, to become Chief Justice of the Supreme Court of South Carolina.

When Jay resigned the office of Chief Justice on June 15, 1795, Rutledge wrote President Washington and in carefully selected phrases suggested that his own appointment to succeed Jay would be personally pleasing. Hamilton, who was closer to Washington than any one else, had just refused the place. Washington, therefore, promptly appointed Rutledge as Chief Justice on July 1, 1795, and he was sworn into office on August 15th.

But soon after the resignation of Jay and while the country was still torn over the Senate's ratification of the *Jay Treaty* with England, which Washington had not yet formally signed, Rutledge had made a bitter speech in Charleston at a public meeting called to condemn the treaty. He was an open sympathizer with France, which was then at war with England, and felt keenly that the *Jay Treaty*, negotiated in part by Thomas Pinckney, of South Carolina, then American minister to England, was a great mistake.

Garbled reports of Rutledge's address had been sent north, where deep indignation arose. Rumors went abroad that Rutledge had been intoxicated when the address was delivered, and his mental stability was called in question. The loss of both his wife and mother in 1792 had been a great shock to him, he was known to be of a brooding nature, and all this added color to the popular charges against him.

Only two cases had come before the Court while Rutledge was its

active head, but he had heard cases on his circuit in North Carolina and South Carolina until the strongly Federalist Senate met on December 19th of that year, when it promptly refused to confirm his appointment. It was a great blow to Rutledge, whose eagerness for the position had been apparent. Just as he had been dethroned judicially by the Senate, so was his reason by the blow to his pride and prestige, and the darkness of mental despair henceforth prevailed where once his brilliant intellect flashed. Oliver Ellsworth, of Connecticut, was confirmed as Chief Justice in Rutledge's place, after William Cushing, of Massachusetts, and Patrick Henry had both declined appointment.

The remainder of Rutledge's life, until his death a few months after that of his brother Edward, were years of anguish and humiliation. A son, John Rutledge, Junior, was sent to Congress from Charleston and was a member at the time of his father's death, which in part soothed the family humiliation. Also, the home folks elected their former Governor and great Justice a member of the State Legislature during his last years, as an evidence of their loyalty and love, and a local Charleston paper which supported him answered the charges of his critics by saying that if John Rutledge had one lucid moment while in the Legislature, he would do more for the general good in that short period of time than any other half dozen representatives could do during the entire session. It was said that he had that lucid moment and that he did what was expected of him. He died on August 7, 1800, and was buried at St. Michael's in Charleston.

#### *CHARLES PINCKNEY*

South Carolina sent two members of the Pinckney family as delegates to the Constitutional Convention, both of whom bore the name of Charles. The elder of the two was General Charles Cotesworth Pinckney, the great Revolutionary soldier, the younger one was simply Mr. Charles Pinckney, of South Carolina.

Charles Pinckney has been unfairly treated by some historians of the early period of our history. That he offered one of the plans for a constitution when the Convention met, which plan was considered in the committee of the whole and rejected in favor of

a similar plan offered by Governor Randolph, of Virginia, the records of the Convention bear testimony. That his original copy was lost by the Committee on detail, to whom all the several plans were finally submitted, is also historically correct.

The cause for controversy arose in 1818 when Pinckney sent to the Secretary of State, John Quincy Adams, what he claimed was a correct copy made at the time of the plan for a constitution he had offered on the Convention floor thirty-one years before. If what he claimed was true, then this able young South Carolinian of less than thirty years of age was the author in his own name of a plan identical with more than one-third of the entire Constitution as we have it today.

Unfortunately for the fame of Charles Pinckney, however, James Madison, who had kept the most accurate and the only complete record of the Convention, was very much alive in 1818, though retired, after having been eight years a Secretary of State and eight years a President. Madison, whose notes had not then been published and were not to be for twenty-two years more, was quick to deny the validity of the bulk of Charles Pinckney's claim. We publish herewith the letter of Madison on the subject:

"The length of the document [Pinckney's plan] laid before the Convention, and other circumstances having prevented the taking of a copy at the time, that which is inserted in the debates was taken from the paper furnished to the Secretary of State, and contained in the Journal of the Convention, published in eighteen hundred and nineteen; which, it being taken for granted that it was a true copy was not then examined. The coincidence in several instances between this and the Constitution, as adopted, having attracted the notice of others, was at length suggested to mine. On comparing the paper with the Constitution in its final form or in some of its stages, and with the propositions and speeches of Mr. Pinckney in the Convention, it was apparent that considerable error had crept into the paper, occasioned possibly by the loss of the document laid before the Convention, (neither that nor the resolution offered by Mr. Patterson being among the preserved papers,) and by a consequent resort for a copy to the rough draught, in

which erasures and interlineations, following what passed in the Convention, might be confounded, in part at least, with the original text, and after a lapse of more than thirty years, confounded also in the memory of the author.

"There is in the paper a similarity in some cases, and an identity in others, with details, expressions, and definitions, the results of critical discussions and modification in the Convention, that could not have been anticipated.

"Examples may be noticed in Article Eight of the paper; which is remarkable also for the circumstance, that, whilst it specifies the functions of the President, no provision is contained in the paper for the election of such an officer, nor indeed for the appointment of any executive magistracy, notwithstanding the evident purpose of the author to provide an entire plan of a federal government.

"Again, in several instances where the paper corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his propositions, and in his arguments, the former in the Journal of the Convention, the latter in the report of its debates. Thus, in Article Eight, of the paper, provision is made for removing the President by impeachment, when it appears that, in the Convention, on the twentieth of July, he was opposed to any impeachability of the magistrate. In Article Three, it is required that all money bills shall originate in the first branch of the legislature; which he strenuously opposed on the eighth of August, and again on the eleventh of August. In Article Five, members of each House are made ineligible to, as well as incapable of holding, any office under the Union, etc., as was the case at one stage of the Constitution,—a disqualification highly disapproved and opposed by him on the fourteenth of August.

"A still more conclusive evidence of error in the paper is seen in Article Three, which provides as the Constitution does, that the first branch of the legislature shall be chosen by the people of the several states; whilst it appears that on the sixth of June, according to previous notice, too, a few days only after the draught was laid before the Convention, its author opposed that mode of choice, urging and proposing, in place of it, an election by the legislatures of the several states.

"The remarks here made, though not material in themselves, were due to the authenticity and accuracy aimed at in this record of the

proceedings of a public body so much an object, sometimes, of curious research, as at all times of profound interest."

When Madison also pointed out that the very paper on which Charles Pinckney's claimed draft was written had been made ten years after the Convention met, as disclosed by its water mark, skeptics were inclined to agree with him.

But though Charles Pinckney's claim for the authorship of the entire Constitution may be invalid, he was one of its real makers. It is unfortunate that he should have sought a larger claim than the facts justified his claiming.

His life began and ended in Charleston, South Carolina, where he was born October 26, 1757. He was taught by private tutors, as were many of the sons of early southern aristocrats whose fathers declined to send them to far-away northern colleges, there being few southern colleges at that time. After studying law under his own father, a cousin of General Charles Cotesworth Pinckney and himself a lawyer of distinction, young Charles Pinckney entered public life at twenty-two by serving in the South Carolina House of Representatives, a position which he filled at various times of his life for a total of eighteen years. It was during that period when South Carolina was largely at the mercy of British troops, that young Pinckney, who joined the struggling American forces, was captured and was for a short time a prisoner of war after the fall of Charleston.

When he was twenty-seven, Charles Pinckney was sent as a representative of South Carolina to the Continental Congress. Despite his youth he entered actively in the affairs of the poorly attended Congress, and won a fame he might not have won had the Congress been a larger one or one composed of older men. He was there during the memorable session of 1785 and 1786, when John Jay almost put over his treaty of doubtful fame with Spain. The proposed treaty would have obtained certain commercial privileges of great value to the shipping interests of the East in exchange for the surrender of the free use of the Mississippi River, which meant much to the people of the South and even more to those living in what is now Kentucky and Tennessee, a territory then belonging to Vir-

ginia and North Carolina, respectively. Gardoqui, the agent of Spain, had known Jay abroad when he was the American minister to Spain. Seven of the northern states voted in favor of Jay's plan, but under the leadership of Southerners the proposal went down to defeat.

Later, in 1795, Spain made a new treaty with the United States, which acknowledged the right of American use of the Mississippi River for three years. But by its very nature the subject was to remain controversial, and was not finally adjusted until the purchase of the territory by the United States from France, which had only obtained actual possession of the territory twenty days before the sale. Later, it was Pinckney's privilege to represent the United States at the court of Spain after the Louisiana purchase and get releases from Spain to certain portions of the territory which had been in dispute when the deal with France was made.

Charles Pinckney's services to the national government also included a visit to New Jersey in company with Nathaniel Gorham, of Massachusetts, on behalf of the Continental Congress. He went at a time when New Jersey was about to withdraw its support of the Federation, and its legislature had already passed a resolution to pay no more of the requisitions for money made periodically by the Congress. Pinckney and Gorham were successful in inducing the legislature to rescind the resolution, but it nevertheless failed to make any provision for paying past or future requisitions.

With such a glaring example of the weaknesses of the national government before him, it is not difficult to understand why Charles Pinckney was active in the last years of the Congress in advocating changes in the Articles of Confederation. He was appointed to a committee to suggest changes, in which committee also sat William Samuel Johnson, of Connecticut, and W. C. Houston, of New Jersey, later fellow members to the Convention at Philadelphia. It was probably at this time that he became acquainted with an exhaustive plan by a Yale graduate, teacher and economist of Philadelphia, Peletiah Webster, published on February 16, 1783, more than four years before the Philadelphia Convention met, calling for a consoli-

dated National Government of three branches similar to the plan later offered at Philadelphia by Randolph, and also similar to the plan claimed by Pinckney to have been submitted by him.

At the Convention at Philadelphia no one was more active than Charles Pinckney. In addition to submitting his own plan for a Constitution, he entered actively into all the principal debates, uncompromisingly advocating slavery and championing an aristocratic form of government. Later, his influence was also great in the fight over ratification in South Carolina, and he was elected Governor of that state in the same election which made Washington President of the United States. He served for three years as Governor of South Carolina, returned to private life for five years, and was again elected governor for three years more. As governor he fought for free public schools, the removal of the disabilities that had hung over the citizenship of Jews in South Carolina, and otherwise proved himself a convert to Jeffersonian principles to an extent unexpected after the positions he had taken at Philadelphia, and quite contrary to his famous cousin, Thomas Pinckney, of South Carolina, who became one of the national leaders of the Federalist party. It was while Pinckney was governor that the capital was moved to Columbia. He also served, when governor, as president of a state constitutional convention.

When Pinckney's second period as governor ended in 1798 he was sent to the United States Senate, where he remained for only three years, resigned, and returned to South Carolina. Those were the closing days of John Adams' unhappy administration, in which Pinckney watched his new political hero, Jefferson, triumph over Adams and his cousin, C. C. Pinckney, who was a candidate for Vice-President.

Upon Charles Pinckney's return from a four years' successful diplomatic mission to Spain at the request of Jefferson in 1805, he again served in the legislature of his native state, as Madison and many others of that day were to do after holding higher honors in the national service. In 1806 he was chosen as Governor of South Carolina for the third period and served until 1808. The exclusive aristocrat of twenty years before had become a liberal Jeffersonian democrat, and during this his last term the property qualification for suffrage



was removed and all whites were allowed to vote. Still not content to leave state politics, he again served in the state legislature during the years 1810 and 1812, where he had commenced his long public career more than thirty years before. Thereafter he retired to private life in Charleston until 1818, when the Charleston Congressional district sent the no longer precocious and bold youngster to Washington as its Congressman.

Charles Pinckney was now the seasoned veteran who had lived more than a third of a century since his first service in the Continental Congress, and he did not enjoy his last term as a lawmaker. Monroe was President, and Clay, the rising star of the West, was brilliantly leading the nation into the Missouri Compromise, an expedient which Pinckney opposed. He belonged to the old-time, tide-water slavery element of South Carolina, and he looked askance on the plan to curtail slave territory in the West. On the expiration of his two-year term in Washington he returned to Charleston, where he died three years later, on October 29, 1824. It was at the very height of the Presidential campaign which ended in the defeat of Jackson and the election of John Quincy Adams, who had fought slavery with as much eloquence and force as he had defended it.

Pinckney was a man of strong friendships and bitter enmities. On the platform he could be fervidly eloquent and a fine debater, and no southern statesman of his time excelled him in personal appearance. He had a lordly carriage, clear musical voice, and the persuasive courteous manners of the old-time southern orator and statesman. He was a trained linguist, and knew Latin, Greek, French, Spanish, and Italian. He was charming in his social relations and widely known as a conversationalist. His wife was Mary Laurens, daughter of a famous family which gave much to the Revolutionary cause.

A son, Henry Laurens Pinckney, was for years the noted editor of the *Charleston Mercury*, and from 1833 to 1837 the representative in Congress of the same Charleston district which his father had last represented twelve years before. Like his father he was a stand-pat slavery advocate, and introduced the resolution known as the "Gag Resolution," which forbade petitions against slavery to be introduced

in Congress. It was the fight over that resolution opposed by John Quincy Adams, then also a member of Congress, which brought Adams more real fame than all his four earlier years in the White House.

One of Pinckney's daughters, Frances Henrietta, became the wife of Robert Y. Hayne who, after his famous debate with Daniel Webster on the floor of the United States Senate, resigned his seat, went home and became Governor of South Carolina, the office his wife's father had so often held. Hayne was succeeded as Senator by John C. Calhoun, after Calhoun had resigned the office of Vice-President to assist Hayne in his fight for nullification of a tariff act enacted during the first administration of President Andrew Jackson. Another daughter became the wife of David Ramsey, the great historian of South Carolina.

All in all, South Carolina should treasure the brilliant career of Charles Pinckney, whose public life covered the most momentous years of our early history, and whose descendants have written their names large in the annals of that state.

#### *CHARLES COTESWORTH PINCKNEY*

There was no finer character among the fifty-five delegates who attended the Convention which wrote the Constitution than Charles Cotesworth Pinckney, of South Carolina. He represented the flower of southern aristocracy in birth, breeding, and education.

He was a true South Carolinian. The first Pinckneys came to South Carolina from England in 1692. His father, Charles Pinckney, was Chief Justice of the highest court of that state and his mother was Eliza Lucas, the daughter of an officer of the Royal army and a fine figure in her own name. His home during his entire life, except for the sixteen years spent abroad in school, was in Charleston, where he was born February 25, 1746.

When only seven years of age, C. C. Pinckney and his brother Thomas were sent abroad to be educated.<sup>1</sup> They were prepared for college at the famous Westminster School for boys in England, where the integrity of both Charles and his brother was

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<sup>1</sup> Their father was abroad for a while as the agent of South Carolina.

soon recognized by their English school principals. On one occasion, an issue arose among the pupils in which the matter of having exact facts was the burning question. The principal of the school turned to C. C. Pinckney and said, "I know the strictness of your principles and your attachment to truth. Speak, Pinckney, and I will be guided by your sentiments." The boy was certainly the father of the man, in that case, and the confidence of that English teacher was the confidence of all who knew him in after years. From Westminster, the Pinckney boys went to Oxford University for their college work. They were not Rhodes' scholars, for it was before the day of Cecil Rhodes, but they were upstanding American boys who caught the spirit of that center of classical learning and world culture. In after years, Charles Cotesworth was known as a Latin and his equally gifted brother Thomas as a Greek scholar. C. C. Pinckney was the one Oxford man who signed the Constitution, among its twenty-nine college-bred men. One of the teachers at Oxford, who had a great influence upon the lives of these choice souls, later in life became the Archbishop of York. Another lecturer there was Blackstone, the law writer. It was no wonder that the characters of Charles Cotesworth Pinckney and that of his brother were not only the jewel of their souls but the pride of South Carolina.

After leaving Oxford the two brothers went to London and studied law at the Inner Temple, then the great law school of the world, and the mecca for many future statesmen. Since a military training was regarded as essential to the finished education of noble Englishmen, the Pinckney boys were next sent to France where they studied military tactics at its Royal Military Academy. After sixteen years of training in the best schools of Europe these two boys, the finished product of the best education then available to human minds, returned to South Carolina where they served throughout their lives as the best representatives of cultured Christian citizenship and self-sacrificing heroism.

A word must be said here of Thomas Pinckney. He was a Governor of South Carolina, after his military achievements during the Revolutionary War, and was chosen by Washington as America's first minister to England. It was he who aided in adjusting the

unsettled issues between America and England after the war was over. The Jay Treaty of 1795, which was largely the treaty of Hamilton rather than Jay who went to England to assist Thomas Pinckney in his work of adjustment, was the first great issue which divided America into two distinct political groups. Then it was Thomas Pinckney whose name appeared on the ticket with John Adams as the Federalist candidate for President in the campaign of 1796 when Hamilton strove to keep Jefferson out of the Presidency. If the plan of electing a President which prevails today had been in force, Thomas Pinckney would have been elected Vice-President in 1796 instead of Jefferson. He was also most influential in the completion of the treaty made between the United States and Spain in 1795 which provided for the free use of the Mississippi River by the American states, an issue which had provoked much irritation between the United States and Spain for the previous twelve years, and which caused George Rogers Clark, the conqueror of the Northwest Territory, to organize an army in Kentucky a few years before for the purpose of forcibly taking New Orleans from the Spanish. Clark bore the high sounding title of Commander of the French Forces in America and was encouraged in his military ambitions by Genet, the bold and erratic minister from France, who was attempting to create a French party in American political life when he was recalled at the request of President Washington.

From Charles Cotesworth Pinckney's return to Charleston from Europe in 1769 until his death fifty-six years later, he was one of South Carolina's first citizens. He did not seek or desire renown in life as the holder of high political office, but won such on account of his ability, exalted character and usefulness as a citizen. He entered upon his professional career when great events in the life of the Colonies were in the making and mother England was trying unsuccessfully to force an unpopular and unjust tax upon her American children. When the controversy became more acute and the Provincial Congress was organized, he was chosen as the first Attorney General of South Carolina. He later served in both Houses of the South Carolina Legislature and was President of its Senate. He entered the military service and used the valuable military training

he had received abroad in behalf of his own people. Beginning as a Captain, he rapidly won military promotion and at the end of the war held the rank of Major General in the American Army. It was his misfortune to see Fort Moultrie taken and Charleston fall into the hands of the British. For two years he was a prisoner of war. During the time he was in prison he lost his only son by death.

The character of C. C. Pinckney was no better revealed than when he scorned an offer of his own freedom from prison in exchange for an oath of loyalty to England. The English officer who offered the bribe in speaking of it in after years said, "I was awed into silence by the superiority of his patriotic virtues and degraded by the offer I had undertaken." It was no wonder that one who knew him well said of him in after years, "There was not a purpose which his soul ever framed or his hand acted, but he could well have bid the world look on; and what he once durst to do, have dared to justify."

Later, he was called north to assist Washington and was a participant in the important battles of Brandywine and Germantown where other Americans also achieved great military distinction.

After the end of the war, C. C. Pinckney devoted the remaining years of his life to his business and professional interests. Besides his legal accomplishments, he was an extensive South Carolina planter. Rice and indigo, the great export crops of that state, were first introduced by members of the Pinckney family. As a lawyer, he was known for his profound knowledge and his strong argumentative powers.

He did accept appointment to the Convention which wrote the Constitution. Like his colleagues, he opposed any effort to interfere with the slave traffic, which was regarded as a necessary evil in South Carolina where slave labor was largely used in the raising of rice and indigo.

Pinckney stood for an autocratic form of government at Philadelphia and was one of the great leaders in the compromise made between the slave-owning South and the commercial North which made the Constitution possible. It was he who championed the fight for religious freedom on the floor of the Convention. He also

stood for a property qualification to vote and reluctantly yielded to a more democratic form of government.

It is difficult for the present day reader to think of this great churchman and president of the Charleston Bible Society as the defender of human slavery. But anti-slavery agitation was hardly in its infancy then as is legislation against cruelty to animals today. No layman of his day was a more active churchman or more useful in the spread of religious literature. He was a low churchman and was beloved by all denominations for his religious leadership. He was noted for his charity and benevolence. It was said of him "that the blessings of the widow and orphan were his in life and in death their tears bedecked his tomb."

He could have been Secretary of War when Henry Knox resigned that position and Secretary of State when Jefferson left the cabinet of Washington, a post offered successively to Paterson, of New Jersey; Rufus King, of Massachusetts; Thomas Johnson, of Maryland, and Patrick Henry, of Virginia, all of whom declined it. C. C. Pinckney was not interested in a proffered appointment to the highest court in the land. He was frank to say if General Washington should call him to the performance of any public duty to which private consideration *ought* to yield, and should say to him that he *must* accept, then all private obligations would cease. He never felt that such a time arose. As one biographer expressed it, "His love of honor was greater than his love of power and deeper than his love of self." When Washington visited Charleston, while President, Charles Pinckney as Governor rode into the city with him and C. C. Pinckney met him at its gate.

After his service in helping write the Constitution, the next official position accepted by Pinckney was when Washington appointed him to succeed James Monroe as minister to France when Monroe was called home from France on account of his display of too much enthusiasm for the French Revolutionary movement then in the midst of its triumphs. Monroe, it will be remembered, followed Gouverneur Morris, our first Ambassador. The French Government refused to receive Pinckney as minister, who quietly retired to Amsterdam and waited for further instructions. When Adams succeeded Washington soon thereafter as President, he

sent Elbridge Gerry, of Massachusetts, and John Marshall, of Virginia, to join Pinckney in Europe as a special commission of the United States Government to adjust the differences between the United States and France. The French minister, Talleyrand, through secret dispatches known as the X. Y. Z. messages demanded a bribe of the American Commissioners as the price of their interview. Insulted, the Commissioners immediately withdrew from France. It was Pinckney who made the historic reply to Talleyrand, "Millions for defense, but not one cent for tribute," a statement which was quoted in a memorial tablet to his memory erected in Charleston. Gerry, as an individual, remained and attempted an adjustment of the strained relations. As a result of the treatment accorded the American Commission, the French Treaty of 1778 was abrogated and all but war followed. Though no actual war was declared, more than eighty French vessels were destroyed by the American fleet off the coast of New York and for the first time the Secretary of the Navy was given full cabinet rank, a post held by Ben Stoddert, of Georgetown. The triumph of Napoleon in 1800 led to a renewal of diplomatic relations between the United States and France.

Before Adams had finished his unhappy administration as President, Pinckney again was called into service. George Washington was importuned by Adams to serve at the head of the American Army when war with France seemed imminent, and finally accepted, with reluctance, on condition that Hamilton, C. C. Pinckney and Knox should serve as next in line and actually assume all military responsibility except in case of a French invasion of America. When the friends of Pinckney complained that his military career entitled him to a rank above that of Hamilton, he replied by saying, "Let us dispose of our enemies first. We shall then have time to settle the question of rank." While no occasion arose for any actual military service, he strove then as always to put patriotism first.

After the defeat of Adams in the campaign of 1800, and the death of Hamilton a few years later, the Federalist party was a ship without a rudder and doomed to soon go on the rocks of oblivion. Charles Cotesworth Pinckney, who had been the unsuccessful Federalist candidate for Vice-President in 1800, was persuaded to be-

come its candidate for President in the campaigns of 1804 and again in 1808, in hope of restoring its lost leadership. In the first campaign Jefferson won a second term as President and in the campaign of 1808 Madison fell heir to the toga worn by Jefferson and easily defeated Pinckney.

Though he did not win as the candidate of a party then decadent, he was in every way fitted to serve as President of the nation he had served so faithfully and honorably in both peace and war. The tides of democracy were too strong for an aristocratic Federalist to overcome. His cousin, Charles Pinckney, had become a follower of Jefferson and his leader in South Carolina.

The last years of the life of C. C. Pinckney were devoted to high public service in his own state. He was the President of the Society of the Cincinnati after the death of Washington. He was also for fifteen years the President of the Board of Trustees of the University of South Carolina, which he had helped to establish. His famous brother, Thomas, who succeeded him as President of the Society of the Cincinnati, died November 21, 1828.

The family life of Charles Cotesworth Pinckney was ideal. His first wife was a daughter of Henry Middleton, one of the Presidents of the Continental Congress, and a sister of Arthur Middleton who signed the Declaration of Independence. Another Middleton belle, a cousin of Mrs. C. C. Pinckney, was the wife of Pierce Butler, a South Carolina signer of the Constitution.

The death of his only son broke the line of Pinckney heirs in his family, and none of his three daughters left descendants. One of his daughters, Maria Pinckney, became a woman of renown and aided John C. Calhoun in his nullification fight a few years after the death of her father, which occurred on August 16, 1825. One of the last acts in his life was to join in the welcome to Lafayette when the great Frenchman visited Charleston a few months before the end of Pinckney's life. Lafayette landed at Charleston when he first came to America, about fifty years before his last visit, and Charleston received him back again with a wild welcome. The thousands who gathered to meet the grizzled Frenchman were moved to tears as he and the aged Pinckney wept on each other's shoulders in greeting one another



in the streets of Charleston. Kisses were planted on both American and French cheeks, and France and America were again united.

It was not surprising that the vestry of old St. Michael's Church where C. C. Pinckney reverently worshiped, and in which he was buried, should wear crepe on their arms for a month in his memory, and that the South Carolina Agricultural Society he had so successfully led should mourn the loss of a brother and friend.

He was an example to his own generation of an incorruptible patriot, gallant soldier, genial and accomplished statesman and liberal sincere patriot. He was worthy of all the ecomium heaped upon his name and will live on as one of the great hearts of his day and generation.

### *PIERCE BUTLER*

The South Carolina delegation to the Convention which wrote the Constitution was a distinguished one. All of its members were native sons, all belonged to the aristocracy of the state, and all were scions of great families in early South Carolina history except Pierce Butler, who was one of the foreign born signers of the American Constitution.

While he was not a son of the South, he did bear the name of a proud family in Carow County, Ireland, where he was born July 11, 1744. His father was for many years a member of the British Parliament and was known in his native heath as Sir Richard Butler. Though Pierce, his son, married into an old southern family where family pride occupied a high place, he could also be proud of his own ancestry.

Pierce Butler was educated in the local schools of Ireland and early in life chose for himself a military career. He was given an officer's commission when only twelve years of age, served for a number of years in the English army at home, and was then sent to America following the ominous rumblings resulting from the mother country's efforts to have the American colonies share in the expense of their own protection after the French and Indian wars, by paying a small tax on certain legal documents.

He was among the group of British soldiers attacked by cer-

tain citizens of Boston on the streets of that city, which attack culminated in what is known in history as the "Boston Massacre." The local indignation was great, and out of the embers of that conflict arose the increasing flame of the rebellious New Englanders. John Adams, then a young attorney, boldly accepted the task of defending the British officers, and won distinction as a lawyer which helped him in his future legal career.

Later, Butler, who held the military rank of Major, a title which clung to him during the rest of his life, was transferred to South Carolina, where he met and married in 1771 Mary Middleton, a near relative of Henry Middleton, one of fourteen men who later served at different times as President of the Continental Congress. Ralph Izzard, who later served with Butler in the first United States Senate, and the dignified and upright Charles Cotesworth Pinckney, also married into the Middleton family.

Butler's wife's family was aristocratic and wealthy, and two years after his marriage he left the English army and took up the quiet life of a South Carolina rice and indigo planter in Prince William Parish; he also experimented with and was the first in America to grow the high quality sea island cotton. Six years later, in 1779, his adopted state made use of his military experience by inviting him to serve as Adjutant-General. He also served in the South Carolina Legislature, where he was a member from 1778 to 1782, and again from 1784 until 1789. It was a strange turn of fate which led Major Pierce Butler, the leader in an exclusive family, independent, impulsive, and dictatorial, on whose plantation his hundreds of slaves worked and walked under military direction and with military precision, to become the spokesman and champion of the rural districts of rebellious South Carolina. But that element needed leadership, and Butler, despite his connections and his English training, became their mentor, leaving it to others to represent the wealthier and more cultured coastal regions of the state.

He was serving as a delegate to the Continental Congress when he came to Philadelphia to sit in the Constitutional Convention, having been chosen as a delegate to Philadelphia two days after his election to the Congress.

The most important individual act championed by Butler in the

Constitutional Convention was the fugitive slave provision which was followed by enabling legislation early in Washington's first administration, to be repealed many years later. It was the reenactment of that law during the administration of President Millard Fillmore which was to hasten his political exit and help end the political career and hasten the death of Daniel Webster. The gentle Whittier twitted the great Webster's action in a poem in which he called Webster the "Great Ichabod."

Butler also stood with his southern colleagues in their unsuccessful fight to require a property qualification for national office, and he was generally an advocate of a strong central government.

When the South Carolina Legislature selected its first two United States Senators, Pierce Butler and Ralph Izard, a former minister to Italy, were chosen. Butler was re-elected and remained in the Senate until 1796, when he resigned, left Philadelphia, and went back to his old life as a planter, but within seven years he was again chosen to fill out an unexpired term of three years.

In the first Senate he was a leader in Hamilton's plan for the funding of the state and national debt, but opposed ratification of the Jay Treaty in 1795, and also opposed the tariff and judicial acts passed during the first years of Washington's administration. When the eleventh amendment to the Constitution was offered in Congress, he stood almost alone in opposing it. In 1806, after finally leaving the Senate, Butler moved from South Carolina to Philadelphia, where he served for many years as director of the United States Mint. He owned stock in the Bank of North America and served as one of its directors.

When William Blount was impeached by the Senate, Butler served as one of his bondsmen. Butler's demand for payment of funds due him by James Wilson, a member of the Supreme Court and signer of the Constitution, aided in the financial embarrassment and early death of that great lawyer.

Pierce Butler had no sons, but one of his grandsons took the grandfather's name and was his pride and joy. That grandson married Fannie Kemble, the famous actress of her time, and her letters written from one of the Butler plantations on St. Simon's, among the "golden islands" off the Georgia Coast, give a vivid pic-

ture of plantation life in the old South. In time the grandson of that grandson, a Russian Count, became the husband of Nellie Grant, the only daughter of President U. S. Grant, their White House marriage being the social event of Grant's administration. Another Butler plantation known as "Butler's Island" was located in McIntosh County, Georgia, at the mouth of the Altamaha River.

Butler died in Philadelphia on February 15, 1822, and was buried in the old Christ Churchyard, where so many of the great of the early days of the republic sleep the sleep of eternity, and beneath a tomb which reminds the living of the devotion of the grandson who perpetuated the Butler name. He was not only the only signer of the Constitution from South Carolina who was not born in that state, but he was the only one who was buried outside of its domain when life's fitful fever was over.

## XIV

### GEORGIA AND THE CONSTITUTION

**O**F all the states of the Union, Georgia was the most undeveloped in 1787, its first permanent settlement having taken place only fifty-five years before. In addition to its Atlantic seaboard, which was just being settled, its territory included the present states of Alabama and Mississippi, with Spain across the Mississippi River and Florida a Spanish province on the south. The population of the state was small, though increasing rapidly, being at that time about one-sixteenth that of Virginia. It was a frontier state and felt keenly the need of national protection.

The Indian menace was also a problem which could not be solved by local efforts alone. Georgia, like other states of the Union, had violated the Articles of Confederation by making its own treaty with the tribes of Cherokee Indians living near what is now Chattanooga, Tennessee, though its Indian question was not to be finally settled until more than forty years later, when President Jackson removed the Indian tribes to a territory of their own, carved out of former Spanish territory across the Mississippi River and included in the Louisiana Purchase of 1803.

New settlers, both great and lowly, had gone into Georgia in great numbers after the Revolution. Among the best-known characters who came from the North were "Mad Anthony" Wayne, of Pennsylvania, who served for a time as a Georgia Congressman, and General Nathaniel Greene, of Rhode Island, who ranked next to Washington as a military leader. In appreciation of his great service during the Revolution, the state of Georgia gave General Greene a 2,000-acre plantation on Cumberland Island off its seacoast, where he lived and on which he died at forty-two from the effects of a sunstroke. It was at the Greene home that General Henry ("Light Horse Harry") Lee, the father of Robert E. Lee, also died and was buried in 1818 while visiting the family of his friend of Revolutionary days.



*William Few*



*Mr Barlow*



With most of its inhabitants but recently arrived from other parts of the Union and with its problems of the frontier clearly beyond its own slender means, the feeling for greater national unity in Georgia was strong. Nevertheless, though perhaps for reasons of economy chiefly, Georgia did not choose special delegates to go to the Constitutional Convention, but selected its six delegates to the Continental Congress to represent it also at Philadelphia. Two of the delegates selected, Nathaniel Pendleton and George Walton, did not go to Philadelphia. Four of them, Baldwin, Few, Pierce, and Houstoun, went, but only Few and Baldwin were present and signed the Constitution when it had been completed. Pierce and Houstoun had in the meantime returned to their duties in the Congress at New York.

Pennsylvania, New Jersey and Delaware had all unanimously ratified the Constitution when the Georgia convention of only twenty-five delegates from its ten counties met at Augusta, Georgia, on January 2, 1788. John Wereat, a name little known in either Georgia or American history, was chairman. After but little discussion Georgia by a unanimous vote approved the new Constitution. It was the first southern state to ratify, the only southern state to do so by a unanimous vote, and the only one which suggested no amendments.

Among the delegates to the ratification convention were William Few, one of Georgia's two signers of the Constitution; George Mathews, of Wilkes County, who was Governor of Georgia a few years later at the time of the Yazoo land frauds, and Joseph Habersham, the first Postmaster-General appointed by Washington and Georgia's first major office-holder in the new national government. A daughter of Habersham later became one of the two American wives of Genet, the erratic French Ambassador, the daughter of George Clinton being the other one.

Of the two delegates who were sent to Philadelphia but did not go, one of them, Pendleton, was appointed a United States District Judge for Georgia by George Washington, but after taking a leading part in the fraudulent "Yazoo land scandals," referred to more fully in the sketch of Abraham Baldwin, resigned his judicial position and moved to New York, where he won further notoriety by serving as



Hamilton's second in his ill-fated duel with Burr. For that act, Pendleton was disfranchised in New York for twenty years. His son, Nathaniel Greene Pendleton, went to Congress from Ohio and was the father of George H. Pendleton, also a Congressman and Senator from Ohio and the Democratic candidate for Vice-President with George B. McClellan in 1864.

George Walton, the other absentee at Philadelphia, had been one of the signers of the Declaration of Independence, and served later as a United States Senator from Georgia and as Chief Justice of the Supreme Court of his state. His name remains an honored one in Georgia history.

When Georgia established an independent government in 1776, it chose as its first Governor Archibald Bullock, a maternal ancestor of Theodore Roosevelt, whose mother was a native of Georgia.

#### ABRAHAM BALDWIN

There has been for more than one hundred and fifty years an invisible tie between Georgia, Georgians, and Yale University. The man responsible for the beginning of that long period of mutual interest was Abraham Baldwin, one of the signers of the Constitution for the State of Georgia.

Baldwin was a New Englander, born in the small village of Guildford, fifteen miles east of New Haven, Connecticut, on the second day of November, 1754. His father was the village blacksmith, and he grew up in a home where labor was looked on as a badge of honor, and truth and virtue as the crowning attributes of manhood.

The family moved later to New Haven and, at the price of much self-sacrifice, sent their fine young son to Yale, where he graduated at the tender age of eighteen years. Yale at that time was not known for its moral atmosphere, but despite his environment, young Baldwin planned early in life to enter the ministry, as did so many of the able young men who attended the colleges of that day.

After spending a while as a student of theology, Abraham Baldwin, who had been licensed to preach, served as a tutor in his alma mater until he left in 1779 to serve as a chaplain in the Revolutionary War. It was a time of great stress and strain, and the fate of

the colonies hung in the balance. His optimism and patriotic fervor made him highly acceptable in the struggling armies. He was serving in the same capacity when the Revolutionary War ended.

During his brief career as a minister after the war, Baldwin went back to Yale and preached to the students, and there is a tradition that on one occasion he spent the entire day discoursing on the Scriptures and calling his fellow sons of Eli to repentance. It is said he declined an offer of the chair of divinity in Yale.

After returning home from his services as a chaplain, Abraham Baldwin turned to the study of law and was admitted to the Bar in 1783 in the town of Fairfield, Connecticut. But on the advice of General Nathaniel Greene, Baldwin in 1784 decided to seek his fortune in the South, locating in Augusta, Georgia. The West had not opened and it was the South which allured ambitious young men.

As evidence of young Baldwin's quick climb to recognition and popularity in the state of his adoption, he was sent to the Georgia House of Representatives in 1785, one year after he had located there. It was in the Georgia Legislature that this young citizen of spotless character, fine intellect, high patriotism, and consuming ambition rendered his first and possibly greatest service. It was his privilege to introduce in the Georgia Legislature the bill which provided the plan for its educational system. Under the law sponsored by Baldwin, 40,000 acres of Georgia land, a generous portion of its chief wealth, was set aside for educational purposes. The educational system was climaxed by the establishment at Athens of the institution out of which grew the State University, first named Franklin College. For sixteen years, from 1785 to 1801, he served without pay as the Chairman of its Board of Trustees; resigning when it had become possible from a financial standpoint to choose Joseph Meigs, also of Connecticut, as its first President. That institution, America's oldest state university, owes much to Abraham Baldwin, its godfather, whose character and Puritan personality were deeply impressed upon its early graduates.

As a result of the capable leadership he had shown, Abraham Baldwin was quickly sent to represent Georgia in the Continental Congress, where he served from 1785 to 1788. He was one of the eighteen Congressmen who were to be members of the Con-

stitutional Convention and of the Continental Congress at the same time.

The most notable service rendered by Baldwin as a member of the Convention was in tying the vote of Georgia when the first ballot was taken on the question of equal representation of all the states in the Senate of the United States, in which he had, no doubt, been influenced by the Connecticut delegates. Though the vote of Georgia was cast against equal representation when the final ballot was taken several days later, it is agreed by all students of the Constitution that the opportunity for delay afforded by Georgia's tie vote gave the time necessary to keep the Convention from immediate disintegration. As a loyal leader of the people of his adopted state, Baldwin, though by birth a New Englander and by training perhaps inclined against slavery, nevertheless stood solid with his other members and the South Carolina delegates in their fight to have slavery continued and to prevent its prohibition in the Constitution.

When Georgia voted to select its first three Congressmen as provided in the Constitution, he was chosen as one of the number. He first sat in New York, where he had sat in the Continental Congress, and later served in Philadelphia when the seat of the national government was moved there. He was a loyal supporter of Washington and his administration. Punctuality was one of his outstanding attributes, and he had the unusual distinction of serving continuously without one day's absence from Congress. No wonder he was looked upon by his associates as safe, sane and sincere.

After serving for ten years in the House, Baldwin was promoted to the Senate of the United States in 1799 and served until his death on March 4, 1807, just eight years from the time he had first begun his services there. He was twice President pro tempore of the Senate.

One of the fine examples of service performed by him for his beloved Georgia was as one of the three commissioners appointed by that state to adjust the unhappy situation which followed the ill-famed Mississippi bubble, the land scandal occurring during the administration of Washington also known as the Yazoo land deals.

A group of four different land companies had been organized to buy land in the western section of Georgia, a section now included in the delta area of the state of Mississippi. The state was in need of urgent funds and anxious to sell a portion of its wide land areas in order to pay its accumulating debts. The scandal lay in the manner of the sale and the price received. Under the leadership of Nathaniel Pendleton, who occupied the position of United States District Judge for Georgia under appointment by George Washington, the legislature of Georgia was bribed into passing an act for the sale of what was estimated at thirty-five million acres of land for only \$500,000. Members of the legislature were given stock in these companies, whose promotion was about on a par with the promotions of many western oil companies today. No less renowned an individual than James Wilson, of Philadelphia, a member of the Supreme Court of the United States under appointment from Washington, was one of the persons interested in this great swindle, having put more than \$125,000 of borrowed money into this and other similar enterprises. James Gunn, one of Georgia's first United States Senators, was also a leader in the scheme.

To his everlasting credit James Jackson, Georgia's other member of the first United States Senate, was greatly outraged at this open and scandalous disposal of the state's lands, resigned his place as Senator, returned to Georgia and ran for membership in the state legislature for the sole purpose of having the legislature right the wrong which had been done the people of that state by the previous session. Through the influence of Jackson acts were passed rescinding the former acts which had made possible this wanton dissipation of the state's wealth.

There is a well-founded tradition that Jackson used the sunlight and a magnifying glass to burn the records of the former legislature on the state-house grounds at Louisville, Georgia, saying as he did so that he wished the very fire of heaven to destroy the evidence of the outrage which had been perpetrated upon a helpless people by its self-chosen lawmakers. When the fires had destroyed the records of that infamy, Jackson is said to have looked heavenward and prayed, "God save the state and long preserve its rights, and may every attempt to injure them perish as these corrupt acts do."

As a result of this effort to declare illegal the sales which had been made to these four land companies, and the still more numerous sales made by them to untold innocent purchasers, long-drawn-out contests followed in the courts of Georgia and other parts of the country. Large tracts of land had been sold in Boston, and John Quincy Adams was the attorney in many of the proceedings when the issue finally reached the United States Supreme Court.

In 1802, when Georgia ceded to the Federal Government all its public lands, the question of title to the lands formerly sold was again involved. Baldwin was chosen, together with John Milledge and James Jackson, as one of the three commissioners from Georgia to meet with a like commission for the national government, consisting of James Madison, Secretary of State; Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General, to adjust the unfortunate situation. It was more than fifteen years after the original sales had been made before a final adjustment could be had with the innocent purchasers, and over four million dollars was paid by the Federal Government during the administration of James Madison in adjustment of the claims for damages.

Baldwin remained a bachelor throughout his life. Nevertheless, it was his privilege not only to help in the development of the educational system of Georgia, but personally to educate a number of his own nephews and nieces. That he was well rewarded for his efforts was shown in the career of one nephew, Henry Baldwin, who located in Philadelphia, became a great lawyer and member of Congress, and died a member of the Supreme Court of the United States. Henry Baldwin was appointed to the bench by President Jackson to succeed Bushrod Washington, who like himself had been the favorite nephew of a famous uncle.

The end came to Abraham Baldwin while he was serving as a Senator in Washington, where he fell at his post. He was widely mourned. Though he was only fifty-three years of age he had long been known for his faithful public service, having been continuously a member of the Congress since the first inauguration of Washington, eighteen years before. He was buried in the old Congressional Cemetery in Washington.

Georgia has honored his memory by naming a county after him, but it is doubtful whether many Georgians of today realize the great debt they owe to this transplanted New Englander, who brought to that state the best in culture, character, and constant personal devotion to the highest good.

#### *WILLIAM FEW*

William Few was one of the two delegates from Georgia out of the six originally chosen who remained on the Convention floor at Philadelphia until the end and affixed their names to the Constitution when it had been completed. His colleague in this was Abraham Baldwin, to whom he was, however, a great contrast in many ways.

Few was a native of Baltimore County, Maryland, where he was born on June 8, 1748. He came from Quaker parents whose ancestors were country people, the first of whom had come to America with William Penn. He was perhaps the only representative of the middle class farm element who aided in the making of the Constitution, although even this statement is not strictly accurate, for by 1787 he had gone to Georgia and his family had acquired large holdings which put him, strictly speaking, in the aristocratic Southern planter class. Even Baldwin, whose father had been a blacksmith, had become a comparatively well-to-do lawyer with prominent Southern clients by the time he was sent to Philadelphia.

When he was ten years of age his tobacco-raising father moved from Maryland to Orange County, North Carolina, where the family lived a hectic existence before moving on to Georgia. The Battle of the Alamance, one of the bloodiest battles of the Revolution, took place in the neighborhood of the Few farm, which was overrun and had much of its property destroyed by British soldiers. Later, James Few, a brother of William, was hanged as a "Regulator," a band of hard-fighting North Carolinians who desperately contested the British victories throughout the state. Another brother, Benjamin Few, saw much service with the regular army and obtained the title of "colonel" before the war was over.

The Few family, after having suffered heavily for its espousal of

the Revolutionary cause in the more settled districts, next moved to Wrightsboro, Johnson County, Georgia, and thereafter quickly became identified with early Georgia history. William married Catherine Nicholson, from a prominent local family, and others in his family intermarried with other fine old families of the time. One such was the Candler family, out of which came Asa Candler who founded the Coca-Cola industry, and Bishop Warren A. Candler, who for more than thirty years was a bishop in the Methodist Episcopal Church South, and one of the founders of Emory University, a Methodist institution. The first president of Emory was Ignatius Few, a nephew of William. One of the Few relatives also became the wife of Albert Gallatin, the Swiss scholar who came to America to teach French at Harvard and wound up his career by serving for twelve years as Secretary of the Treasury under Jefferson and Madison.

William Few had been in Georgia only a few months when, in 1776, he joined in writing the first constitution of the state, and was elected as a member of the first general assembly to meet under the new constitution. Two years later he was elected a judge of Richmond County, Georgia. He was on four different occasions a member of the Georgia House of Representatives and also served on its executive council.

It was also his privilege to serve for five years as a member of the Continental Congress. He was elected in 1780 and again in 1782. Three years later he was again elected and served the full three-year period. During this time he served as a commissioner to the Indians, perhaps because, like Washington and other early leaders, he had had wide experience as a surveyor. He was also a member of the grand committee composed of one delegate from each state appointed to consider the resolutions at Annapolis calling the Philadelphia Convention, and voted in favor of its call. He was serving in the Congress when chosen to represent Georgia at Philadelphia.

The part played by William Few in the making of the Federal Constitution was not a conspicuous one. Although he was born in the North and of Quaker stock, he was allied with the Southern leaders who stood steadfastly against any sort of provision which would

have prevented human slavery in America. The Southern delegations were largely under the domination of Virginia and voted on most questions as did Madison and other Virginia leaders.

When the Georgia ratification convention met at Augusta in January, 1788, Few was a delegate there and joined heartily in the plan for quickly ratifying the Constitution by a unanimous vote. There were many reasons why the unprotected border state of Georgia looked forward to a strong national government, and its leaders did not fail to show their gratitude despite the undercurrent of sentiment favoring an independent Southern confederacy.

The Georgia Legislature chose William Few as one of its two first United States Senators to serve under the new Constitution. Little is known of the quality of his service. However, he did manage to avoid any undue complicity in the Yazoo land scandals, which smirched so many prominent Georgians, including James Gunn, his colleague in the Senate.

After serving as United States Senator for four years William Few returned to Georgia, where one year later he was elected as judge of the Circuit Court of Georgia. He failed in an ambition to go back to the Senate in 1795. He served as judge for three years, from 1794 to 1797. Two years later he moved to New York City. This was in accordance with the apparent habit of many Southern leaders of the time, who abandoned their adopted states and located in the North after accepting great honors at the hands of their young and growing constituencies. Dr. Hugh Williamson, of North Carolina, also moved to New York, and Pierce Butler, of South Carolina, spent his last years in Philadelphia.

Politics must have been in the blood of this country-bred lawyer, patriot, and politician, for William Few had only been in New York three years when he was elected a member of the New York Legislature, a position which he held for three years until he won an appointment as United States Commissioner of loans. He also served the state for a time as inspector of prisons. As a man of private means Few was a director from 1804 to 1814 of the Manhattan Bank in New York, founded by the ill-fated Aaron Burr, after which he became president of the New York City Bank. He was reputed to have at this period of life an estate of \$100,000, which



was a considerable fortune in that day and age. One of the last public movements which excited his interest was the building of the Erie Canal, which meant so much to the business life of New York a century ago.

In personal appearance William Few was described as tall, slender, grave, erect, and dignified. He was known as a liberal contributor to all worthy causes and as a citizen of good judgment, wide information, and fine public spirit. He did not forget his early Quaker breeding, was known for his profound piety, and demonstrated a supreme interest in all Christian activities.

Few died at Fishkill-on-the-Hudson, in Dutchess County, New York, on July 16, 1828, at the home of one of his three daughters, and was buried there in the Dutch Reformed Church Cemetery. When he had passed on James Madison alone remained of all that band which had made themselves immortal by affixing their signatures to the Federal Constitution.

#### WILLIAM PIERCE

William Pierce, of Georgia, like his fellow delegate, Houstoun, was one of the obscure members of the Constitutional Convention. He was a regular attendant until toward its close, when he returned to New York and resumed his duties as a member of the Continental Congress and did not return again to Philadelphia. In the end he sent his regrets to the Convention over his inability to sign the document he had assisted in preparing.

Pierce was a native of Georgia, where he was born in 1740 and where he spent his entire life. When the Revolution broke out, he served as a Georgia soldier and was for a time a major on the staff of Nathaniel Greene, the great military leader from Rhode Island who was the southern commander in the Revolution. Pierce's services were such that he was voted a sword for gallantry in action, by the Continental Congress.

After the war Pierce became a prominent merchant in Savannah, Georgia, where he spent the remaining years of his life as a business man.

No direct contribution to the Constitution can be traced to Pierce, but he is to be remembered as the author of a series of short sketches

appearing at the time in a Savannah paper describing the principal personalities of the Philadelphia Convention. These have been widely quoted by historical writers.

The Georgia delegation as originally chosen was one of the largest selected to go to Philadelphia, but consisted only of two members at the close. It was largely under the influence of Virginia on most of the vital issues and voted solidly with South Carolina on the delicate slavery question.

Pierce was the first of the fifty-five men elected to go to Philadelphia to pass away. He died at Savannah on December 10, 1789, only a few months after the new Federal Government was established, and is buried there. He was not related to the Pierces of Georgia, prominent as Methodists.

#### WILLIAM HOUSTOUN

William Houstoun, whose name was sometimes spelled "Houstown," was one of the six Georgia members of the Continental Congress who were appointed to go down to Philadelphia from New York and represent Georgia at the Constitutional Convention. He was the son of an English officer, and a native of Savannah, Georgia, where he was born in 1755 thirty-two years before the Convention met. His ancestors had come to Georgia with Oglethorpe.

Houstoun grew up in Savannah, lived there all his life, and was there buried at his death in 1833. He died just three years before Madison, the last of the signers of the Constitution to pass away.

The family of Houstoun was one of wealth and refinement, and the son was sent to London to complete his law studies where Dickinson, of Delaware; Ingersoll, of Pennsylvania, and John Blair, of Virginia, other members of the Constitutional Convention, secured their legal education.

Upon his return to America he located in Savannah and there spent his entire life. When Abraham Baldwin came down to Georgia from Connecticut and inaugurated the plans which culminated in the establishment of the University of Georgia, America's first state university, Houstoun was one of his active helpers.

Houstoun was sent as a Georgia delegate to the Continental Con-

gress in 1784, and served in that capacity for three years, being one of the last Georgians and one of that state's few native sons, so to serve.

Houstoun was not a conspicuous member of the Constitutional Convention, and he and his colleague, William Pierce, also of Savannah, went back to their duties in the Congress at New York before the Convention closed. Neither returned to sign the Constitution, and Houstoun's name is included among those who opposed it.

After his services ended as a Continental Congressman Houstoun returned to Savannah, where he lived until his death forty-six years later.

*PART FOUR*  
*AMENDMENTS AND THE CONSTITUTION*

“It is not in the general organization but in the practical workings of American government, in the things which the laws and usages determine, that most of the development has taken place. The people of the United States live under a far more efficient and a far more popular government today than in the closing years of the eighteenth century. This is not because there has been no revolution, bloodless or otherwise. It is merely because a steady popularization in the spirit, usages, and methods of government has been possible within the original framework.”—WILLIAM B. MUNRO, *The Government of the United States*, p. 106.

## I

### AMENDING THE CONSTITUTION

**D**ISCUSSION is rife today over the question of amending the Constitution. Many of those who have lightly proposed various amendments sponsored by different groups of society have apparently had but little realization of the considerations involved in making any change in this, the fundamental law of the land.

Only twenty-one amendments to the Constitution have at this writing been approved by the American people, although one hundred and forty-eight years have elapsed since June 20, 1788, when the Constitution went into effect, an average of about one amendment for every seven years.<sup>1</sup> Of the twenty-one amendments, eleven or more than one-half, were made during the first administration of George Washington. Ten of these in reality constitute our Bill of Rights, as they are often called, the adoption of which granted to the American people certain fundamental rights which should have been included in the original Constitution. The eleventh also cured an oversight in drafting the original Constitution, and the twelfth changed the method of electing the President, which from the beginning was unsatisfactory. All twelve became effective within fifteen years of the beginning of the new government. The thirteenth, fourteenth and fifteenth amendments did not come until over sixty years later and grew directly out of the slavery issue, which the Constitution had left unsolved. It was not until the sixteenth amendment in regard to the income tax, approved and effective in 1913, that a really novel trend was noticeable.

The builders of our national structure deliberately made it impossible for changes to be hastily made in the Constitution. They

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<sup>1</sup> Up to 1936, 3,759 amendments to the Constitution had been proposed since Washington became President.

required a two-thirds vote of each branch of Congress or the votes of two-thirds of all the state legislatures as prerequisite for the submission, of an amendment to the Constitution, to the people. Then the approval of the legislatures of three-fourths of all the states or the approval of state conventions called by the legislatures of three-fourths of all the states was made an additional requirement before any amendment could become a part of the Constitution.

And yet, though the machinery for amending the Constitution is apparently slow-moving, it should also be noted that, once substantial national unity is arrived at, the time which has actually been required to obtain the adoption of an amendment, measured from the time of its submission to the states by Congress, has in almost every case been very short. In almost every one the time has been only a little more or less than two years, and in several cases less than a year was required. Also, only twenty-six amendments have been sent to the states by Congress for approval, of which only four were rejected. The twenty-sixth, in regard to child labor, is now before the states.

The question of amending the Constitution became an issue on the floor of the Convention which framed it even before that document had been completed and submitted to the states for ratification. The question was freely discussed, for no one on the floor of the Convention doubted that many changes would be made in it, and all agreed that an oath to support the Constitution would not preclude the one taking such an oath from advocating future changes therein. Edmund Randolph, of Virginia, who presented the "Virginia Plan" for a constitution, the framework upon which the Constitution was finally completed, refused to sign the finished product because, among other reasons, it made no provision for a second constitutional convention to consider such amendments as would naturally, he felt, be required.

Five of the eleven states which first acted on the question of ratifying the Constitution did not suggest any amendments. Delaware, New Jersey and Georgia unanimously ratified the Constitution without suggesting any kind of amendments, while Pennsylvania and Connecticut offered no amendments though their conventions

were much divided on the question of ratification. The other six states, Massachusetts, New Hampshire, New York, Maryland, Virginia, and South Carolina, proposed amendments to be acted on by the first Congress. North Carolina and Rhode Island also offered amendments when their conventions finally ratified the Constitution.

The sentiment for vital changes in the Constitution, after its approval by nine states, continued to be strong. Governor George Clinton, of New York, had been opposed to ratification, and after his majority of the delegates in the New York ratification convention had melted before Alexander Hamilton's fervid eloquence, he started a movement for a second national convention rather than wait for the new Congress to submit amendments as provided for in the Constitution. A message to that effect was sent by Clinton to the governors of all the states, and at one time he had reason to feel that his plan would be approved. Patrick Henry, a popular leader in Virginia as Clinton was in New York, sympathized with his plan, for he had just been routed in Virginia by Randolph much as Clinton had been routed by Hamilton in New York. Under the urging of Henry, Virginia supported the Clinton plan for a second convention, though the plan failed to win much support in the other states. Clinton subsequently became the choice of Virginia and New York for Vice-President in 1792, though he was not destined to become Vice-President until twelve years later on a ticket with Jefferson.



## II

### EARLY ADDITIONS AND ALTERATIONS

#### *AMENDMENTS I TO X*

##### Bill of Rights

**W**HEN the new Congress was finally organized on April 6, 1789, twenty-four days before Washington was inaugurated, plans were made immediately for submitting amendments to the Constitution, and on September 25, 1789, four days before the first Congress adjourned, it voted to submit to the states for their consideration twelve amendments based on the original twenty amendments offered in the first House of Representatives by Madison. The House had approved seventeen of the original twenty, and these were reduced to twelve by the Senate. The amendments were at first only considered by eight of the eleven states which then composed the United States, since ratification by that many of the states was sufficient to make the amendments effective. The states of Massachusetts and Connecticut in the North and Georgia in the South took no action on them. Later Rhode Island ratified them on June 15, 1790, seventeen days after its approval of the original Constitution. Virginia, which ratified them on December 15, 1791, was the tenth state to do so.

While Virginia proposed most of the amendments adopted, the Massachusetts Convention suggested an amendment relative to titles of nobility, South Carolina fathered the amendment as to oaths, New Hampshire the amendment relative to bearing arms, and North Carolina the clause which imposed a restriction upon quartering of troops.

The two amendments submitted but not ratified by the requisite number of states had to do with the number of representatives in the lower House of Congress and the question of Congressmen increasing their own pay. The latter subject has ever since been a delicate one, and on a number of occasions it has happened that

a Congressman has failed of re-election because of over-anxiety about his immediate income. James A. Garfield, when a Presidential candidate, was embarrassed by having voted an increase in the pay of Congressmen not effective until after the expiration of the term in which he gave his vote.

From the amendments proposed by Virginia as quoted below it will be seen that a number of them were on subjects on which the delegates to the Philadelphia Convention had not been in accord, though in the end most of this class of amendments were not submitted to the states.

The first ten amendments constitute our national Bill of Rights. The necessity for a bill of rights was so self-evident in the light of Anglo-American constitutional history that it is very difficult to understand why the substance of the first ten amendments was not included in the original Constitution. In English history the precedent for unqualified guarantees by the sovereign of certain fundamental personal liberties to the individual subject or citizen goes back as far as the Magna Carta in 1213. In England almost the entire seventeenth century was devoted to a struggle for the assertion of such rights against the Stuart kings, until the matter was finally and incontrovertibly established in 1688, when William and Mary were required to sign a bill of rights as a condition precedent to their right to the English throne. The repercussions of that struggle were felt in the American colonies in the form of Bacon's Rebellion in Virginia, the leader of which was a relative of the famous English judge and jurist, Lord Bacon. All during the eighteenth century to the time of the Revolution the American colonists continued to be engaged in asserting the same rights as Englishmen against the colonial governors. But though the subject was broached a number of times on the floor of the Constitutional Convention, the delegates never took definite action on the subject, for reasons which do not fully appear.

The first ten amendments have been construed to apply only to the Federal Government, and not to the states.

One of the interesting debates in Congress when the first ten amendments were approved was over the question of the relation such amendments should bear to the original Constitution. Roger

Sherman, of Connecticut, argued that such amendments were merely corrections of what had been done at Philadelphia, and as such should be incorporated in the body of the original Constitution. Madison successfully argued that such amendments could only be regarded as additions to the Constitution and not as corrected parts of an instrument already completed and ratified.

The Ten Amendments as adopted by the states were as follows:

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

II. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

III. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

IV. The right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for

obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

IX. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Twenty Amendments proposed by the Virginia ratification convention were:

1. That each state in the Union shall respectively retain every power, jurisdiction, and right, which is not by this Constitution delegated to the Congress of the United States, or to the departments of the Federal Government.

2. That there shall be one representative for every thirty thousand, according to the enumeration or census mentioned in the Constitution, until the whole number of representatives amounts to two hundred; after which, that number shall be continued or increased, as Congress shall direct, upon the principles fixed in the Constitution, by apportioning the representatives of each state to some greater number of people, from time to time, as population increases.

3. When the Congress shall lay direct taxes or excises, they shall immediately inform the executive power of each state, of the quota of such state, according to the census herein directed, which is proposed to be thereby raised; and if the legislature of any state shall pass a law which shall be effectual for raising such quota at the time required by Congress the taxes and excises laid by Congress shall not be collected in such state.

4. That the members of the Senate and House of Representatives shall be ineligible to, and incapable of holding any civil office under the authority of the United States during the time for which they shall respectively be elected.

5. That the journals of the proceedings of the Senate and House of Representatives shall be published at least once in every year except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy.

6. That a regular statement and account of the receipts and expenditures of public money shall be published at least once a year.

7. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both houses respectively.

8. That no navigation law, or law regulating commerce, shall be passed without the consent of two-thirds of the members present, in both houses.

9. That no standing army, or regular troops, shall be raised, or kept up in times of peace without the consent of two-thirds of the members present, in both houses.

10. That no soldier shall be enlisted for any longer term than four years, except in time of war, and then for no longer term than the continuance of the war.

11. That each of the states respectively shall have the power to provide for organizing, arming, and disciplining its own militia, whensoever Congress shall omit or neglect to provide for the same. That the militia shall not be subject to martial law, except when in actual service, in time of war, invasion, or rebellion; and when not in the actual service of the United States, shall be subject only to such fines, penalties, and punishments, as shall be directed or inflicted by the laws of its own state.

12. That the exclusive power of legislation given to Congress over the federal town and its adjacent district, and other places, purchased or to be purchased by Congress of any of the states, shall extend only to such regulations as respect the police and good government thereof.

13. That no person shall be capable of being President of the United States for more than eight years in any term of sixteen years.

14. That the judicial power of the United States shall be vested in one Supreme Court, and in such courts of admiralty as Congress may from time to time ordain and establish in any of the different states. The judicial power shall extend to all cases in law and equity arising under treaties made, or which shall be made, under the authority of the United States; to all cases affecting ambassadors, other foreign ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, and between parties claiming lands under the grants of different states. In all cases affecting ambassadors, other foreign ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction; in all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, as to matters of law only, except in cases of equity, and of admiralty, and maritime jurisdiction in which the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make; but the judicial power of the United States shall extend to no case where the cause of action shall have originated before the ratification of the Constitution, except in disputes between states about their territory, disputes between persons claiming lands under the grants of different states, and suits for debts due to the United States.

15. That, in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.

16. That Congress shall not alter, modify, or interfere in the times, places or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.

17. That those clauses which declare that Congress shall not exercise certain powers, be not interpreted, in any manner whatsoever, to extend the powers of Congress; but that they be construed either as making exceptions to the specified powers when this shall be the case, or otherwise, as inserted merely for greater caution.

18. That the laws ascertaining the compensation of senators and representatives for their services, be postponed, in their operation,

until after the election of representatives immediately succeeding the passing thereof; that excepted which shall first be passed on the subject.

19. That some tribunal other than the Senate be provided for trying impeachments of senators.

20. That the salary of a judge shall not be increased or diminished during his continuance in office, otherwise than by general regulations of salary, which may take place on a revision of the subject at stated periods of not less than seven years, to commence from the time such salaries shall be first ascertained by Congress.

The declaration of rights sponsored by Patrick Henry in the Virginia Convention was strikingly similar to the Ten Amendments finally added to the Federal Constitution. It was as follows:

#### *VIRGINIA'S PROPOSED BILL OF RIGHTS*

That there be a declaration or bill of rights asserting, and securing from encroachment, the essential and unalienable rights of the people, in some such manner as the following:

1st. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

2nd. That all power is naturally invested in, and consequently derived from the people; that magistrates therefore are their trustees and agents, at all times amenable to them.

3rd. That government ought to be instituted for the common benefit, protection, and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive to the good and happiness of mankind.

4th. That no man or set of men are entitled to separate or exclusive public emoluments or privileges from the community, but in consideration of public services, which not being rescindable, neither ought the offices of magistrate, legislator, or judge, or any other public office, to be hereditary.

5th. That the legislative, executive, and judicial powers of government should be separate and distinct; and, that the members of the two first may be restrained from oppression by feeling and par-

ticipating the public burdens, they should, at fixed periods, be reduced to a private state, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the Constitution of government and the laws, shall direct.

6th. That the elections of representatives in the legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to, the community, ought to have the right of suffrage; and no aid, charge, tax, or fee can be set, rated, or levied upon the people without their own consent, or that of their representatives so elected; nor can they be bound by any law to which they have not, in like manner, assented, for the public good.

7th. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.

8th. That, in all criminal and capital prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses to call for evidence, and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces;) nor can he be compelled to give evidence against himself.

9th. That no freeman ought to be taken, imprisoned, or dis-seized of his freehold, liberties, privileges, or franchises, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, or property, but by the law of the land.

10th. That every freeman restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

11th. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is one of the greatest securities to the rights of the people, and to remain sacred and inviolable.

12th. That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in



his person, property, or character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

13th. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

14th. That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property; all warrants, therefore, to search suspected places, or seize any freeman, his papers, or property, without information on oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous, and ought not to be granted.

15th. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

16th. That the people have a right to freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

17th. That the people have a right to keep and bear arms; that a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural, and safe defence of a free state; that standing armies, in time of peace, are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the community will admit; and that, in all cases, the military should be under strict subordination to, and governed by the civil power.

18th. That no soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the law directs.

19th. That any person religiously scrupulous of bearing arms ought to be exempted, upon payment of an equivalent to employ another to bear arms in his stead.

20th. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have

an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others.

#### AMENDMENT XI

##### Federal Judicial Powers

The Supreme Court decision rendered in the case of *Chisholm vs. Georgia* led to the introduction in Congress of the Eleventh Amendment. Chisholm, a South Carolinian, had sued the State of Georgia in the Federal Courts for supplies furnished Georgia during the Revolution, and had obtained a judgment against the state in the lower courts requiring it to pay the cost of the supplies. Justice James Wilson handed down the opinion of the United States Supreme Court, sustaining the lower courts, and holding that a private citizen might maintain a suit against a state in the Federal Courts, and that a state must fulfill a contract once made. The feeling in Georgia was great at this apparent usurpation of its prerogative as a sovereign state not to be sued without its own consent, and its legislature passed an act fixing a heavy penalty on any state official who dared to obey the mandate of the United States Supreme Court. As a result Congress, on March 4, 1794, during its third session, submitted to the states the following amendment:

1. The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

The authorship of this amendment is not clear, but it has been accredited to Theodore Sedgwick, of Massachusetts, who succeeded Fred A. Muhlenberg, the Pennsylvania Dutchman and Lutheran minister, as the first Speaker of the House of Representatives. This amendment became effective on February 7, 1795, while Washington was yet President, although for more than a hundred years it was shown as ratified on January 8, 1798, the error in date being discovered in 1935. The amendment was considered by the fifteen

states then composing the Union, and approved by all of them except Pennsylvania and New Jersey.

## AMENDMENT XII

### Election of the President

No article in the original Constitution was debated more than the article relating to the manner in which the President should be chosen. More than once the Constitutional Convention changed its own agreed plan, and since 1789, out of more than 2,000 amendments to the Constitution offered on the floor of Congress, more than 100 of them have related to the office of President and the method of choosing him. The dissatisfaction over the method finally adopted at Philadelphia was brought to a head in the memorable presidential campaign of 1800, when Aaron Burr received an equal number of votes with Thomas Jefferson in the Electoral College and the choice had finally to be decided by the House of Representatives as provided for in the Constitution.

The following proposed amendment, sponsored by John Dawson, a member of Congress from Virginia who had opposed ratification in the Virginia Convention, was submitted to the states on December 12, 1803:

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President shall be the President, if such number of votes be a majority of the whole number of Electors appointed; and if no person have such a majority, then

from the persons having the highest numbers not exceeding three on the list of those voted for as President the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority then from the two highest numbers on the list the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

So overwhelming was the sentiment for this proposed change in the method of electing the President that twelve of the seventeen states of the Union ratified it by September 25, 1804, when it was declared a part of the Constitution. It was rejected by Connecticut only.

### III

## CIVIL WAR AMENDMENTS

### *AMENDMENT XIII*

### **Slavery Abolished**

**A**FTER the first twelve amendments to the Constitution had been adopted, it was nearly sixty-one years before another proposed amendment was approved by the necessary number of states. It required one of the bloodiest civil wars in history and the emergency of a new era to bring the subject of that amendment to a final and definitive determination.

Under the leadership of Thaddeus Stevens, a member of Congress from the Lancaster district of Pennsylvania, once represented by James Buchanan, the predecessor of Abraham Lincoln in the White House, the thirty-eighth Congress submitted to the states on February 1, 1865, the following proposed amendment:

“1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

“2. Congress shall have power to enforce this article by appropriate legislation.”

This amendment was enacted seventy-eight years after the Philadelphia Convention had refused on the one hand to use the word “slavery” in drafting the original Constitution or to abolish the institution on the other. Abraham Lincoln, who as President issued the Emancipation Proclamation without clear constitutional sanction, was assassinated a few months after the proposed amendment, legalizing his act was offered to the states, and it fell to his successor, Andrew Johnson, from the mountains of Tennessee, to declare the proposed amendment effective.

Thirty-three of the then thirty-six states ratified this amendment and it was declared a part of the Constitution on December 18, 1865, less than twelve months after it had been submitted to the states, only the Twelfth Amendment having been adopted in less time. Delaware in the North and Mississippi in the South were the only states to reject it.

#### AMENDMENT XIV

#### Citizenship; Certain Other Rights

On the 13th of June, 1866, under the leadership of John B. Henderson, a Senator from Missouri, the Thirty-ninth Congress submitted to the states the Fourteenth Amendment to the Constitution, which was as follows:

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to Vote at any election for the choice of Electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and a citizen of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or a Representative in Congress, or Elector of President and Vice President or holding any office, civil or military, under the United States, or under any State, who,

having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid and comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions, and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States, nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

This amendment was declared ratified on July 28, 1868, by President Andrew Johnson, after twenty-three northern states had approved it. It was rejected by Delaware, Kentucky, and Maryland, and at first by ten southern states, though the southern states later formally ratified it.

The history of this amendment and its own language clearly show the immediate problems against which it was directed, but it is to be noted that the number of cases in which it has been invoked for the purposes clearly originally intended are infinitesimal in comparison to the legion of cases in which its second sentence has been invoked in other ways. It is to be noted also that this amendment is one of the few in the Constitution putting any limitation on state action. The first ten amendments, which from their language might apply to the states as well as to the Federal Government, were early construed to have been intended only as restraints on the Federal Government.

#### *AMENDMENT XV*

### **Equal Political Rights for White and Colored Citizens**

The Fifteenth Amendment, which completed the trio of amendments to the Constitution adopted as an aftermath of the Civil

War, was also sponsored by Senator John B. Henderson, of Missouri. It was submitted to the states on the 26th of February, 1869, by the Fortieth Congress, during the closing days of Andrew Johnson's term as President, and was as follows:

1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce the provisions of this article by appropriate legislation.

It was declared ratified about thirteen months later, on March 30, 1870, by President U. S. Grant, after thirty-one of the thirty-seven states of the Union had approved it. It was rejected by California, Delaware, and Kentucky.

As a limitation on the states' hitherto exclusive right to determine the qualifications of their electors, this amendment is to be compared with the nineteenth in regard to women's suffrage.



## IV

### MODERN CHANGES

#### *AMENDMENT XVI*

#### **Federal Income Tax**

**I**T will be noted that the amendments to the Constitution adopted up to this period of our history were amendments which largely concerned individual rights and prerogatives, and that three of the fifteen amendments hitherto adopted had involved issues which grew out of an unfortunate war.

The Sixteenth Amendment provides that:

“The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.”

The amendment was sponsored by Nelson W. Aldrich, a Senator from Rhode Island, the last state to ratify the Constitution, and was submitted to the states by the Sixty-first Congress on July 12, 1909, during the administration of President William Howard Taft, who declared it ratified on February 25, 1913, just before leaving office. Forty-two of the forty-five states approved it, while Connecticut, Utah, and Rhode Island, the home of its sponsor, rejected it.

Income taxes of a sort had been tried during the Civil War. They were primitive in form, their constitutionality was never contested, and as the need for extraordinary revenues passed they were not re-enacted. In 1894 a new Federal income tax was imposed which the Supreme Court held unconstitutional in the case of *Pollock vs. Farmers Loan and Trust Co.*, on the ground that as to a number of kinds of income it was a direct tax and therefore had to be apportioned among the states on the basis of population under Article

1, Section 2, paragraph 3 of the Constitution. This seemed a practical impossibility, and the Sixteenth Amendment was accordingly enacted to allow the Federal Government to impose an income tax without requiring such apportionment. The meaning of the term "direct tax" as used in the Constitution has never been free from doubt, and both counsel and the Court in deciding the Pollock case quoted Madison's notes, the Federalist, and numerous other writings of the time in determining what the framers of the Constitution meant thereby.

The full effect of the failure of the Federal Government to apportion taxes among the states on the basis of their population may be demonstrated by recent figures, which indicate that citizens of Illinois pay \$34 per capita per year in Federal taxes to \$3 per capita paid by Alabama.

#### *AMENDMENT XVII*

#### **Popular Election of Senators**

No amendment made a greater fundamental change in the Constitution as planned by its fathers than did the Seventeenth Amendment, which reads as follows:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures.

When vacancies happen in the representation of any State in the Senate the executive authority of such State shall issue writs of election to fill such vacancies: Provided, that the Legislature of any State may empower the Executive thereof to make temporary appointment until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

This amendment was sponsored by Congressman W. W. Rucker,

of Missouri, and submitted to the states by the Sixty-second Congress on May 16, 1912, during the administration of President William Howard Taft. It was announced ratified on May 31, 1913, by William J. Bryan, Secretary of State in the cabinet of President Woodrow Wilson.

Mr. Bryan had long been an advocate of this amendment, which placed the election of United States Senators where James Wilson and other makers of the Constitution had wanted to place it one hundred and twenty-six years before when the Constitution was drafted. However, it removed the balance originally provided for in the Constitution whereby Senators would represent the states and members of the House of Representatives would represent the people.

#### *AMENDMENT XVIII*

##### **Prohibition**

The only amendment to the Constitution to be adopted and later repealed was the Eighteenth Amendment, which was as follows:

1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

This amendment was sponsored by Senator Morris Sheppard, of Texas, and was submitted to the States by the Sixty-fifth Congress on December 18, 1917, during the administration of President Woodrow Wilson, who announced it ratified on January 29, 1919. All of the states of the Union ratified it except Connecticut and Rhode Island.

This amendment was unique in that the Federal and State governments were to have "concurrent power" to enforce its provisions, a working anomaly in our hitherto strict separation of powers and our jealous distinction between Federal and State functions. It was also one of the very few provisions in the Constitution which contemplated that the Federal authority would touch directly the private life of the citizen.

Although the Eighteenth Amendment was originally approved by more than seventy-five percent of all the state legislatures, it was to be repealed less than fifteen years later by the Twenty-first Amendment to the Constitution, which was ratified in less than eleven months after being submitted to the states.

#### *AMENDMENT XIX*

#### **Women's Suffrage**

The Nineteenth Amendment was as follows:

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
2. Congress shall have power by appropriate legislation to enforce the provisions of this article.

This amendment was also sponsored by Senator Morris Sheppard, of Texas, and was submitted to the states by the Sixty-fifth Congress on June 4, 1919. It was declared ratified on August 26, 1920, by President Woodrow Wilson. Alabama, Maryland and Virginia rejected the amendment, and the Tennessee House of Representatives rescinded its ratification vote.

This amendment, aside from its historical origin, is to be compared with the Fifteenth Amendment. It should be remembered that originally all questions of suffrage were left to the unlimited discretion of the states, but as a quicker means of obtaining national uniformity it was thought more expedient to abridge this time-honored state prerogative by a constitutional mandate on the subject.

*AMENDMENT XX***Terms of Federal Office**

The Twentieth Amendment to the Constitution was as follows:

1. The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January unless they shall by law appoint a different day.

3. If, at any time fixed for the beginning of the term of the President the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall be qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article (Oct., 1933).

6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

This amendment effected a change in the Constitution which had been under advisement for decades. It was sponsored by Senator George W. Norris, of Nebraska, was submitted to the states by the

Seventy-second Congress on March 2, 1932, and was announced as ratified on February 6, 1933, by President Herbert Hoover, during whose administration it had been submitted to the states. All of the forty-eight states of the Union ratified this amendment, the only amendment to the Constitution thus unanimously approved.

The first and second sections of this amendment were in practical operation for the first time in 1934, when one-third of the United States Senate had its term of office abridged thereby. The first President to be affected was Franklin D. Roosevelt, whose expiration date of term of office was shortened thereby from March 4, 1937, to January 20, 1937.

The third section was apparently intended in part to take care of the possibility of disagreement in the choice of a President by Congress after a tie in the Electoral College, and in part to fill a gap in Article II, Section 6 of the Constitution.

#### *AMENDMENT XXI*

#### **Prohibition Repeal, Etc.**

The Eighteenth Amendment was as follows:

1. The 18th article of amendment to the Constitution of the United States is hereby repealed.

2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years.

This amendment was sponsored by Senator John J. Blaine, of Wisconsin, and was submitted to the states by the Seventy-second Congress on February 20, 1933, during the closing days of the administration of President Herbert Hoover. It was announced as ratified by thirty-six states, the required number, on December 5, 1933, less than ten months after it had been submitted to the states, in which respect it ranked with the Twelfth and Thirteenth Amendments in the quickness of its ratification.

The first state to ratify the Twenty-first Amendment was Michigan, which officially announced its approval April 20, 1933. The thirty-sixth state was Utah, whose approval was officially announced on December 5, 1933, on which date the Amendment became effective. Approval took place during the first administration of President Franklin D. Roosevelt.

The second clause of this amendment is unique on its face in that it becomes a violation of Federal law to violate a certain class of state laws, like the Eighteenth Amendment an apparent anomaly in our system of separation of powers and functions. However, in this instance it should be noted that, shortly before enactment of the Eighteenth Amendment, the Supreme Court had held that a Federal statute which did substantially the same as this second clause was a constitutional exercise of the Federal power to regulate interstate commerce. The chief effect of the clause should therefore in the future be to take the issue out of the hands of Congress, and it is not to be considered as a grant of power to the Federal Government.

The third clause was apparently intended to cure an oversight in the provisions of the Constitution as originally drawn. Similar provisions appear at the end of the Eighteenth and Twentieth Amendments.

## V

### AMENDMENTS PROPOSED BUT NOT ADOPTED

**M**ANY unusual amendments have been proposed in Congress. It is impossible to discuss these in detail here, except such few as were actually submitted to the states for approval and were not ratified.

Two amendments which were proposed to the states by Congress at the time the first ten amendments were submitted but which were rejected have already been discussed. One dealt with the power of Congressmen to increase their own salaries, the other sought to alter the ratio of population to representation in the House of Representatives.

An interesting amendment was proposed in 1810 prohibiting the acceptance of any title of nobility or gift from any foreign prince without the consent of Congress, under pain of loss of citizenship and right to hold public office. Twelve states ratified it, two rejected it, and it failed of adoption by the vote of only one state. The Senate of South Carolina approved it, but its House of Representatives refused to bring it to a vote, which amounted to its rejection.

One of the most far-reaching amendments ever approved by Congress and never ratified by a sufficient number of the states was that known as the Corwin Amendment in regard to slavery, which read as follows:

“No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.”

It was sponsored by Thomas Corwin, of Ohio, and offered to the states on March 2, 1861. It was ratified first by Ohio on March 13, 1861, and later by Illinois on February 14, 1862, after the Civil War had been raging for some time. Maryland was the only southern state which ratified it. It failed for lack of further support.



An amendment to the Constitution which would prohibit child labor was before the country when this book was published. Although it was submitted to the states on June 2, 1924, by the Sixty-eighth Congress, it had not received the approval of a sufficient number of states to become effective. However, no time limit was fixed for the consideration of this amendment, as was the case with others submitted to the states in recent years.

*PART FIVE*

*THE FUTURE OF THE CONSTITUTION*

“*Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and stroking her invincible locks. Methinks I see her as an eagle mewing her mighty youth, and kindling her undazzled eyes at the fair midday beam; purging and unscaling her long abused eyesight at the fountain itself of heavenly radiance.*”—MILTON, *Arcopagitica*.

## THE FUTURE OF THE CONSTITUTION

**T**HE author makes no claim to the gift of prophecy. He is neither the son nor the grandson of a prophet. However, he has found it an interesting mental exercise to look into the future and try to visualize its effect upon our present constitutional system.

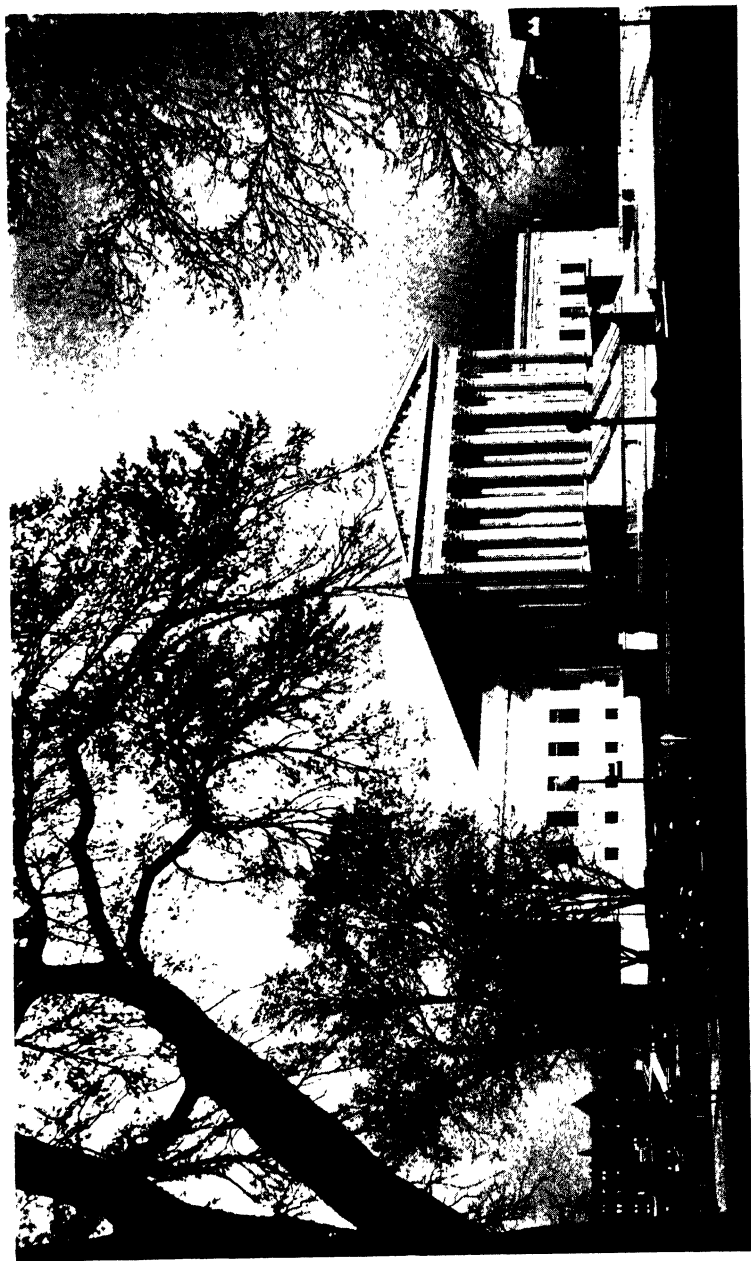
It may be well at this point to arrive at a belated definition of what is meant when we speak of a "constitution." The word "constitution" has two distinct meanings in political thinking. In England the "constitution" is merely a body of precedent, accepted methods of doing things, and ingrained habits of thought controlling the methods of national political expression which have developed in the course of nine hundred years or more of political history. But there is nothing in the English system but the fact of the more or less long use to which any particular part has been put which would prevent a change in any such part by the voluntary act of any particular government then in power. Actually, it was as recently as 1926 that the entire relationship of the parts of the Empire to the Government of Britain was profoundly modified, and the further alteration in the relation of India to the Empire is still in process of formulation. These changes are by mere Parliamentary act as any other law would be enacted.

In the United States, and in most other countries today, the word "constitution" has a far more restricted meaning, and is usually considered to have reference only to a particular written document. Under the system of constitutional government in the United States such extensive changes as England made in 1926 would be analogous to a complete change in the relationship of the states to the Federal Government, and this could only be accomplished in the United States in the manner specified in Article V of the Constitution itself.

This is not to say that ingrained habits of political method and thinking developed over a period of over three hundred years of

political experience, first as colonies of England and then as independent States, have today no effect on our Constitution. On the contrary, their effect is in the last analysis more potent than the written Constitution itself. The Constitution nowhere provides that a state, once admitted to the Union, may not secede therefrom: nevertheless two great parts of the country felt so keenly on the subject in 1861 that they took recourse to arms finally to establish the principle. Likewise, the Constitution nowhere provides that no person shall be President for more than two terms, and yet, pursuant to George Washington's early precedent, the principle is today in practice so firmly established that no President after serving two terms has received the nomination by any political party for a third term. The exact method of electing a President used by the American electorate is not the one provided for in the Constitution, since under the method used, the electors chosen by the people do not in turn choose the President as provided for in the Constitution, but merely record the will of the people as expressed by popular vote at the polls. Likewise, the term commerce as originally used, applied primarily to boats and ships at sea and upon our rivers. Small was the range of its conception as now defined. Such habits of popular thought and conduct outside the strict written Constitution are indispensable to implement it, but they are not, in the American meaning of the term, any part of our constitutional law. They constitute the collective conscience, without whose restraining hand the just application to the multiform facts of life of the literal written law would prove impossible. But they are akin to the mercy which restrains justice in the application of the law, and not to the law itself.

It is true that the Constitution was the outgrowth of a period of particular stress and strain, and many of its provisions were consciously directed to the peculiar conditions then prevailing. However, until the present time the instrument has, by broad interpretation, been found sufficient to meet the needs of the several further crises through which the nation has passed. More than once, acts of far-reaching consequence have been promulgated which were known at the time to be contrary to a literal interpretation of the language of the Constitution. Jefferson felt so strongly the unconstitutionality of his purchase of the Louisiana Territory that he



SUPREME COURT BUILDING, WASHINGTON, D. C.



immediately planned, after the hasty deal was made, to have an amendment to the Constitution submitted to the states which would approve what he had been compelled to do before such an amendment could be properly acted upon. The all but unanimous public approval of his act led him to abandon it. The same issue arose when Lincoln, moved by the stern realities of another great crisis in the life of the nation, issued his Emancipation Proclamation freeing the negro slaves of the south, and then set in motion influences which resulted in the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.

There is always the danger in a period of acute social unrest that the foundations will be overturned and revolutionary conditions prevail. Gorham, a great Boston business man who helped make our Constitution, thought it absurd to think of it as an instrument which would be in effect one hundred and fifty years hence. Hamilton, when leaving the cabinet of Washington, solemnly expressed a fear that the time would come early in the life of the Republic when the ship of state would break away from its moorings. Hamilton thought of the Constitution as a great protector of wealth and of those who accumulate it. He no doubt saw with his prophetic eye the growing influence of those who would not only fetter the culprits of capitalism, but would even attempt to overthrow the political systems which produced them, a situation which existed at the time this book was completed.

It has, therefore, been fortunate for the nation that at critical periods both the people at large and the persons in control of the government have yielded to the mandate of the Constitution as interpreted by the Supreme Court, regardless of its effect. No more striking example of a quiet submission to such interpretation has been afforded than the manner in which the administration at Washington yielded to the decision of that court when it put an abrupt end to the far-reaching control of American industry through the medium of the National Recovery Administration Act. Likewise both the administration and the public at large are to be commended for their acceptance of another opinion of that court handed down at the same time, which declared unconstitutional the act known as the Frazier-Lemke Farm Act, passed by Congress in a desperate



effort to find a legal way for all but bankrupt farmers to escape compliance with that feature in our Constitution which makes inviolate all contractual obligations, and protects one side to a bargain as well as the other.

There is reason to feel that the basic thought of America is sound, and that, fundamentally, we are so well imbued with the spiritual background of individual self-restraint so necessary to make a constitutional government work in practice, that, regardless of the currents which may sometimes sweep upon the surface of our national life, below the restless waves are ever present the calm waters of our firm and undisturbed allegiance to certain great and immovable principles.

The course of history confirms the belief that the future course of the decisions of our Supreme Court will be more in conformity with current politico-sociological ideas than ever before, and that the Court will tend to give greater consideration to human rather than property rights; the reverse has often been the case under what may be termed literal interpretations of the Constitution in the past. Our danger in such a course will result from swinging too far from the philosophy that human rights must derive their sustenance from property rights, and that each class of rights is inextricably entwined with the other. It may be observed here that the liberal Jefferson named happiness as the right of a free people, where Locke, the more conservative English philosopher, whose writings gave Jefferson his inspiration, named property.

It cannot be too much stressed that the Supreme Court, in cases where it must pass on the constitutionality of laws, does not pause to inquire into whether a law is wise, politically desirable, or expedient. Such questions are presumed already to have been answered by the Congress at the time the law was enacted. The Court's only inquiry is whether the Constitution, either expressly or by implication, authorizes Congress or a state legislature to enact the particular piece of legislation under review, or whether the Constitution prohibits it. If it is authorized, the law is constitutional; if it is unauthorized or prohibited, the law is unconstitutional.

The much-discussed five-to-four decisions of the Supreme Court, in which five of the nine members of the Court vote one way and

four another, are only remotely the result of the political complexion of those who make up our courts. But the human element in those who occupy positions on the Court can never be ignored. The process of judicial interpretation is not an exact science, and a court of conservative men will hand down conservative opinions, while one made up of more liberal social views will likewise hand down decisions in keeping with the trend of their own thinking. For these reasons the future of the Constitution will largely be that of our prevailing political philosophy, as expressed by its spokesmen on our highest court. Its membership comes from appointment made by the President and confirmed by the Senate, so that the political complexion of the party in power may sometimes cause a complete change in the social outlook of the court, although this is seldom directly apparent, for no President has ever had the appointment of any large number of justices at any one time.

Much has been said about the authority of the Supreme Court to declare acts of Congress unconstitutional and the way that authority has been exercised. Its critics have called it an assumed authority and one not delegated by the Constitution. A study of the Convention's proceedings when the judicial department of the proposed new government was under discussion will show that such a power was intended to be given to the Supreme Court by the makers of the Constitution. One of the arguments in the Convention against a proposal for its members to pass on the constitutionality of acts passed by Congress at the time such were before the President for his approval or veto, was that the Supreme Court under the proposed new Constitution would likely be called upon later to review such legislation.

James Wilson in law lectures at the University of Pennsylvania, after the Constitution had been written and ratified, clearly outlined the different powers granted to the three coordinate branches of the government, one of which was the power of the Supreme Court to pass on the constitutionality of acts of Congress. That power has not been often exercised, since less than one out of four hundred of all the acts and resolutions passed by Congress in its history has ever been subjected to such scrutiny. Prior to 1860 only two such acts were so reviewed. The first was the case of *Marbury vs. Madi-*

son in 1803, which involved the validity of a portion of the judicial act enacted when the Government was formed fourteen years before, where the decision was read by Chief Justice Marshall (1—Cranch 127). Fifty-four years later and sixty-eight years after Washington became President, in the notable Dred Scott decision of 1857, Chief Justice Taney, for the Court, rendered the opinion repealing in part the Missouri Compromise Act, passed by Congress thirty-seven years before (19—Howard 393).

It will thus be seen that a vast majority of the less than eighty acts of Congress before the Court for adjudication have been decided since the days of Lincoln and that a good percentage of them concerned acts passed during his and Grant's administrations. Twelve acts passed during the first administration of Franklin D. Roosevelt had been before it when this volume was published.<sup>1</sup> The majority of acts before the Court have concerned interpretations of the fifth, tenth and fourteenth amendments to the Constitution, more than one-third of all of them being connected in some way with the tenth amendment alone. The Court's decisions have been unanimous in more than thirty-five per cent of the opinions rendered, and in less than a dozen instances has there been a five to four decision. It may be observed that such a decision is a more democratic one than a six to three decision where a smaller minority could control.

The Constitution has always been, and was intended by its makers to be, far more than merely a protector of property. As the lives of the men who write it unfold and as the history of the making of the Constitution and its amendments clearly show, the protection of property was not its main purpose.

The end of the eighteenth century throughout the world was a period of the most amazing mental speculations, and nowhere to a greater degree than in the field of political philosophy. The members of the Philadelphia Convention had almost all of them taken active part in the eight years' War of the Revolution, which was in itself an assertion of a new philosophy of government, and when they wrote the Constitution their great zeal was, at last to carry into

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<sup>1</sup> In 1936 the Supreme Court in all its history had reversed thirty-five of the seventy-seven cases before it involving Acts passed by Congress. Seven of that number had been passed since March 4, 1933.

the field of working practice their ideals for the protection, not only of the rich and the powerful, but also the weak and the helpless in their pursuit of life, liberty and happiness. And those parts of the Constitution which are directly traceable to this determination of its framers, including most of the amendments which have since been added, have borne their own fruit, and will continue to do so in the future. Thus, only as recently as the early part of 1936 the Supreme Court of the United States ordered a state court to grant a new trial to two poor and lowly Southern Negroes who had been convicted of a crime on no other evidence than confessions, subsequently repudiated, which had been wrung from them by hanging them first by the feet, then by the neck, and finally by beating them with a strap tipped with a metal buckle. Such methods, the Court said, were contrary to all American standards of justice, and violated that right to trial by "due process of law" which was guaranteed every person by the Constitution of the United States.

Recent events have demonstrated that the American people do not desire encroachments by one great department of government upon the rights and prerogatives of another. Under the system of checks and balances provided for in our Constitution the Legislative Department was assigned the power to make, the Executive to enforce and the Judicial to interpret our laws. When any department attempts to encroach upon the rights and duties of the other, there is an immediate clog in our governmental machinery. There are times when certain desirable objectives could possibly be more expeditiously carried out by a department other than the ones to which, under the Constitution, they belong. But certain fundamentals must and will be maintained, and in an effort to achieve quickly some temporarily desirable objective we must avoid compromising the entire system, and thereby possibly establishing permanent ills whose full effects may fall upon us all too suddenly.

In the early years of our history the constitutionality of legislative acts was long and learnedly debated on the floors of the Houses of Congress and our state legislatures, and in due deference to such deliberations, the Supreme Court from the first adopted as a rule of interpretation that every law must be presumed constitutional until demonstrated conclusively to be otherwise, and that all

doubts were to be resolved in favor of its constitutionality. Since the era of our Civil War there has been a more and more evident tendency on the part of our legislators and chief executives to ignore the burden of the responsibility thus put upon them, and to enact laws as to whose constitutionality they had serious doubts, frankly leaving the question of constitutionality to the Supreme Court if any one cared to raise the question. This tendency no doubt explains in part the noticeable increase in cases before our courts questioning the constitutionality of laws, and if the courts of last resort in such cases should in practice overlook their long-standing rule of interpretation, a feeling of mutual distrust might well develop between the co-ordinate branches of our Government which could not but work to the detriment of the nation as a whole. The blessings of an orderly liberal government were paid for in much patriots' blood; by eternal vigilance they can be maintained far more cheaply if, at the same time, each individual citizen and each officer of the Government recognizes in his conduct those restraints which the responsibilities of his position require of him.

The criticisms first directed against the Constitution were largely met by amendments sponsored by Madison, one of its real makers. The right to amend is a continuing one, and future criticism of the Constitution should and will be met by proper amendment whenever it is apparent that the instrument itself is not being interpreted so as to grant the largest rights possible to the American people in their pursuit of life, liberty, and happiness.<sup>2</sup> We call attention to the Twelfth Amendment as an example of how quickly a recognized defect in the Constitution can be corrected. "New occasions teach new duties" to law-makers as well as to others. That "time makes ancient good uncouth," may apply in Constitutional matters as well as elsewhere. Our Constitution was intended to be an elastic and not a static instrument.

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<sup>2</sup> The Honorable Homer S. Cummings, of Connecticut, who served as Attorney General in the Cabinet of Franklin D. Roosevelt, in an article in the *American Bar Association Journal* for January, 1936, said:

"The Constitution is supreme because it expresses the ultimate will of the people. The people are accordingly the masters of the Constitution, and their mastery is expressed in the form of amendment, which it must not be forgotten is as much a part of the Constitution as any other provision."

Amendments to the Constitution<sup>3</sup> may be of a variety of sorts, and inevitably some will involve basically more important principles than others. In the Constitution are some provisions which are not vital to the general scheme and which, at a future time it may be deemed expedient to modify or abolish. Thus the manner of choosing the President and the function of the Senate, both of which grew out of a very deep conflict in our earliest history, have perhaps never fully carried out their original purposes, although the value of the Senate as a balance-wheel in the law-making machine cannot be doubted.<sup>4</sup> Likewise the basis of Senatorial representation without regard to the size of the state represented is hard to understand without a knowledge of the early history of our country. The most serious defect in the method of electing the President and Vice-President was corrected almost immediately after the Constitution was adopted; the method of choosing Senators was but recently changed. The scope of Federal power has several times been added to or modified. If further changes are from time to time offered by expediency or otherwise, it is to be earnestly urged that such changes be made without fear or trepidation, but only upon due deliberation, in a reverential mood, without factional spirit, and with a deep regard for the full consequences of such action.

Similarly, there are many problems before the nation today which have aspects touching upon the Constitution, but which only incidentally affect or are affected by any express provision therein. One such problem is that of the present number of our states and their often quite illogical boundaries. If the pattern of our state organization is ever changed along present regional, social, or economic lines of cleavage it is quite conceivable that many of

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<sup>3</sup> More than sixty amendments to the Constitution were proposed during the first session of the 74th Congress, sitting in 1935.

<sup>4</sup> Thomas Jefferson was in France as American Minister at the time the Constitution was being written and adopted. On his return in the spring of 1790 to take the post of Secretary of State in the first Cabinet, Washington was interested in obtaining his views on the Constitution. Jefferson was not entirely familiar with what had taken place in the Convention, and inquired why there need be a Senate. By way of reply Washington thoughtfully poured his coffee in his saucer, and then asked Jefferson why he had done so. "Why, to cool it, of course," said Jefferson. "Exactly!" Washington replied. "The Senate is the place in which hastily conceived legislation is allowed to cool after it is passed by the House."

our serious difficulties arising from the clash of Federal and state jurisdictions and authorities will vanish entirely and others be much relieved. It cannot be too strongly urged that changes of this sort, if they are some day deemed advisable, be made at the earliest possible moment; the movement toward a reduction of the number of counties and other local governmental bodies within the states has already gained considerable momentum. The success of such extra-constitutional changes in our political organization may serve to remove the necessity for delegating excessive or even otherwise fundamentally undesirable powers to our Federal Government at the expense of our already much-submerged state governments.

The Constitution will have a new significance for the American people as they study its place in our national life. As the dikes of a great stream hold its rushing waters within their power channel so was our Constitution devised to hold our nation within the safe channel of its protective provisions. Such was its purpose when it was drafted by "that glorious company and flower of men" who composed the convention at Philadelphia, and such has been its history as our constitutional law has unfolded through the passing years. In other lands wise men have turned to it for light, as to a wondrous star, in striving to write charters for their emancipated peoples.

In an Indian reservation of the west the visitor is shown a fast crumbling stone known as Spirit Rock to which for generations Indian worshippers have brought their sacrificial gifts. There is a tradition sacred to those who gather there, that when that rock shall have crumbled into dust, their tribe will also have vanished from the earth. Our Constitution for one hundred and fifty years has been the "Spirit Rock" to which all thoughtful Americans have brought their gifts of patriotic devotion. Should the principles of liberty, justice and equality, the component parts of that rock, ever crumble before the turbulent tides of ill-considered and radical innovations it would portend our dissolution as a free people. May we always revere our Constitution and never forget the "men of might, grand in soul" who were its makers in the early and anxious hours of our nation's history.

*"SIT DOMINUS DEUS NOSTER NOBISCUM, SICUT FUIT CUM PATRIBUS NOSTRIS!"—1 Kings, viii, 57.*

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